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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA (SAN JOSE DIVISION)

Symantec Corporation,

Plaintiff,

V.

Luis Chang, and Does 1 – 10, inclusive,

**Defendants.**

Case No. C08-2431 JW

## DISCOVERY MATTER

**EX PARTE APPLICATION FOR LEAVE  
TO TAKE IMMEDIATE DISCOVERY  
PRIOR TO RULE 26(F) CONFERENCE  
AND REQUEST FOR ENLARGEMENT  
OF TIME WITHIN WHICH TO EFFECT  
SERVICE OF PROCESS;  
DECLARATIONS IN SUPPORT  
THEREOF**

Plaintiff Symantec Corporation (“Plaintiff”) hereby applies, *ex parte*, to this Court, for issuance of an Order pursuant to Fed. R. Civ. P. 26(d) authorizing Plaintiffs to serve subpoenas on PayPal, Inc., eBay, Inc., and Yahoo! Inc. pursuant to Fed. R. Civ. P. 45, for purposes of conclusively identifying, locating and serving with process Defendant Luis Chang (“Defendant”), who operates under eBay seller IDs “expdepot” and “shopsmartwithbetterchoice” and with email address chang\_luis@yahoo.com.

1 This application is made in the interests of justice and pursuant to the Court's inherent  
2 equitable power to authorize discovery before the parties have met and conferred as provided in  
3 Federal Rules of Civil Procedure Rule 26(d).

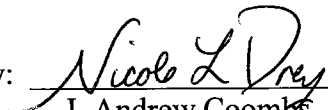
4 In addition, Plaintiff respectfully requests that it be granted a sixty (60) day enlargement of  
5 time within which to effect service of process within the Court's broad discretion pursuant to  
6 Federal Rules of Civil Procedure Rule 6(b) to grant such an enlargement so long as the request is  
7 made before the expiration of the period originally prescribed.

8 This *Ex Parte* Application is based upon the Memorandum of Points and Authorities, the  
9 Declarations filed in support, including Exhibits attached hereto, the Complaint and any other  
10 papers and records on file in this action and upon such additional evidence and arguments as may  
11 be presented at or before the hearing on Plaintiff's application for an order granting leave to take  
12 immediate discovery prior to the Rule 26(f) Conference and request for extension of time within  
13 which to effect service of process pursuant to Rule 6(b).

14 This application is made *ex parte* without notice because Plaintiff has been unable to  
15 identify and locate the Defendant, such relief is necessary in revealing the true identity and location  
16 of the Defendant, and this litigation cannot proceed without the discovery requested in this  
17 application.

18  
19 DATED: August 20, 2008

J. Andrew Coombs, A Professional Corp.

20  
21 By:   
22 J. Andrew Coombs  
23 Nicole L. Drey  
24 Attorney for Plaintiff Symantec Corporation  
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## **INTRODUCTION**

Defendant Luis Chang (“Defendant”) is a trafficker of unauthorized copies of copyrighted software who will be rewarded for concealing his identity to avoid responsibility for his illegal actions if this Application is not granted. Plaintiff Symantec Corporation (“Plaintiff”) has met and exceeded the applicable burden by employing significant effort to identify and locate this infringer, without success. The expedited discovery sought in this application is justified and good cause exists as Plaintiff will be without recourse against Defendant absent the relief sought herein.

Where the tortious conduct occurs through online activity, “[s]ervice of process can pose a special dilemma for plaintiffs.” Columbia Ins. Co. v. Seescandy.com, 185 F.R.D. 573, 577 (N.D. Cal. 1999). The Internet enables tortfeasors “to commit certain tortuous acts, such as defamation, copyright infringement, and trademark infringement” virtually “pseudonymously or anonymously” due to their providing “fictitious or incomplete identifying information” in online transactions. Id. at 578. Thus, courts permit discovery to uncover the identity of a defendant in order to permit compliance with service requirements, utilizing established safeguards. Id. Indeed, other federal courts in this district have granted expedited discovery in lawsuits factually similar to the instant lawsuit. *See* Kimberlite Corporation v. Does, 2008 U.S. Dist. LEXIS 43071 (N.D. Cal. June 2, 2008); Evans v. Unknown Names of Department of Corrections Officers, 2007 U.S. Dist. LEXIS 3071 (N.D. Cal. January 3, 2007). Accordingly, Plaintiff respectfully requests that the subject application be granted.

## **FACTUAL AND PROCEDURAL BACKGROUND**

As alleged in the Complaint on file herein, Plaintiff owns valid and effective copyrights and trademarks in a number of computer software programs for personal computers. Complaint (“Compl.”) at ¶¶ 8-11. The very popularity of the Plaintiff’s catalog has fostered an industry of pirates who sell bootleg versions of Plaintiff’s computer software. Compl. at ¶¶ 14-18. The Internet fosters a level of anonymity which can make identification of those who infringe Plaintiff’s copyrights and trademarks nearly impossible when defendants take steps to conceal their true identities. *See* Declaration of Christopher D. Johnson (“Johnson Decl.”) at ¶¶ 3-7. Defendant

1 is such a pirate and infringer who has taken great measures to avoid and ignore responsibility for  
2 his actions using accounts serviced by various third-party providers. Id. & Declaration of Nicole L.  
3 Drey (“Drey Decl.”) at ¶¶ 3-6.

4 Defendant has obfuscated his true identity in his online transactions by using false  
5 identifying information. The Defendant was an eBay, Inc. (“eBay”), PayPal, Inc. (“PayPal”) and  
6 Yahoo! Inc. (“Yahoo”) user, operating under the eBay User IDs “expdepot” and  
7 “shopsmartwithbetterchoice” and Yahoo email address chang\_luis@yahoo.com. Johnson Decl. at  
8 ¶¶ 4-7; Drey Decl. at ¶ 4. The product was shipped under the name “Luis Chang” with a return  
9 address of “19223 E Colima Rd. #790, Rowland Heights CA 91748” (*sic*). Johnson Decl. at ¶ 7.  
10 PayPal further identified Defendant as Luis Chang. Id. at ¶ 4, Ex. B. Online records research also  
11 identified another possible address for Defendant – “13582 Palcencia Court, Baldwin Park, CA  
12 91706.” Drey Decl. at ¶ 3. However, service attempts made to both addresses proved  
13 unsuccessful. Id. The Rowland Heights address belonged to a private mailbox facility, and an  
14 employee informed the process server that the owner of mailbox #790 had not picked up his/her  
15 mail in months and had let the box go unpaid. Id. at ¶ 3. The Baldwin Park address proved to be  
16 non-existent. Id. at ¶ 3, Ex. E. Therefore, as a result of Defendant’s attempts to conceal his  
17 identity and location by use of an invalid address, Plaintiff’s efforts to establish the Defendant’s  
18 true identity, locate and serve this individual have been unsuccessful. Id.

19 Accordingly, third-party entities that provide services, which facilitate this anonymous and  
20 illegal industry, are entities most likely to have information that will assist in identifying those  
21 responsible, and in this instance, assist Plaintiff to conclusively identify, locate and serve  
22 Defendant Luis Chang with process.

23 Plaintiff now seeks leave of this Court to serve limited discovery on eBay, PayPal and  
24 Yahoo (collectively the “Third-Party Service Providers”) prior to the Fed. R. Civ. P. 26(f)  
25 Conference of Parties, to conclusively identify and locate the Defendant. Plaintiff intends to serve  
26 Fed. R. Civ. P. 45 subpoenas on the Third-Party Service Providers, seeking the Defendant’s true  
27 name, address, and telephone number, as well as the identity of any associated financial  
28



1 institution(s) (which will enable Plaintiff to seek leave to take additional discovery from the  
2 identified financial institution(s) should Plaintiff be unable to serve the Defendant after review of  
3 the records provided the Third-Party Service Providers).

4 If the Court grants this request, Plaintiff will serve subpoenas on the Third-Party Service  
5 Providers within ten (10) business days of receiving the Court's order. The Third-Party Service  
6 Providers will be able to move this Court for an Order quashing the subpoenas, will be able to give  
7 notice to its subscribers that this information is being sought, and any subscriber will have the  
8 opportunity to raise any objections before this Court prior to the return date of the subpoenas.  
9 Thus, there is no countervailing reason to deny Plaintiff's application for expedited discovery of  
10 these Third-Party Service Providers.

11 Moreover, Plaintiff demonstrates good cause for its request for an enlargement of time of  
12 an additional sixty (60) days within which to effect service of process. Plaintiff filed its Complaint  
13 on or about May 12, 2008. Pursuant to Fed. R. Civ. P. 4(m), Plaintiff must serve Defendant no  
14 later than on or about September 9, 2008. Though Plaintiff is diligently prosecuting this action and  
15 making every attempt to serve Defendant within the prescribed 120 days, Defendant's deliberate  
16 concealment of his location and evasion of service has left Plaintiff no recourse other than to seek  
17 information from Third-Party Service Providers. In doing so, Plaintiff must await the responses  
18 from the Third-Party Service Providers and analyze the information to identify and locate the  
19 Defendant. Plaintiff will thereafter attempt service and must again await the response and any  
20 additional information obtained by the process server, and likely, Plaintiff will be required to re-  
21 attempt service on the evasive Defendant on multiple occasions. Accordingly, Plaintiff  
22 demonstrates good cause for a 60 day enlargement of time within which to serve the Defendant.

### 23 **ARGUMENT**

#### 24 **I. Plaintiff's Application Warrants Granting Leave to Take Immediate Discovery.**

25 Courts routinely allow discovery to identify "doe" defendants. *See Wakefield v.*  
26 *Thompson*, 177 F.3d 1160, 1163 (9th Cir. 1999) (error to dismiss unnamed defendants given  
27 possibility that identity could be ascertained through discovery); *Gillespie v. Civiletti*, 629 F.2d  
28

1 637, 642 (9th Cir. 1980) (“where the identity of alleged defendants [are not] known prior to the  
2 filing of a complaint ... the plaintiff should be given an opportunity through discovery to identify  
3 the unknown defendants”); *see also* Valentin v. Dinkins, 121 F.3d 72, 75-76 (2d Cir. 1997)  
4 (discovery should have been permitted to reveal identity of defendant); Dean v. Barber, 951 F.2d  
5 1210, 1215 (11th Cir. 1992) (error to deny plaintiff’s motion to join John Doe defendant where  
6 identity of John Doe could have been determined through discovery); Maclin v. Paulson, 627 F.2d  
7 83, 87 (7th Cir. 1980) (plaintiff should have been permitted limited discovery); *see also* Bivens v.  
8 Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388, 389 n. 2, 91 S. Ct.  
9 1999 (1971) (noting, without discussion, the use of unnamed defendants). This is especially true in  
10 the context of online transactions where defendants often act virtually “pseudonymously or  
11 anonymously” as tortfeasors in providing “fictitious or incomplete identifying information.”  
12 Seescandy.com, 185 F.R.D. at 578.

13  
14 Courts consider the following factors when granting motions for expedited discovery to  
15 identify anonymous Internet users: (1) whether the plaintiff can “identify the missing party with  
16 sufficient specificity such that the Court can determine that defendant is a real person or entity who  
17 could be sued in federal court”; (2) the previous steps taken by the plaintiff “to locate the elusive  
18 defendant”; (3) whether plaintiff’s “suit against defendant could withstand a motion to dismiss”;  
19 and (4) whether plaintiff has “justified the [need for the] specific discovery requested.”  
20 Seescandy.com, 185 F.R.D. at 578-80; *see also* Rocker Mgt. LLC v. John Does, 2003 U.S. Dist.  
21 LEXIS 16277, at \*1-2, (N.D. Cal. May 29, 2003) (applying Seescandy.com standard to identify  
22 persons who posted libelous statements on Comcast message board; denying request for expedited  
23 discovery where the postings in question were not libelous); *see also* Highfields Capital Mgmt.  
24 L.P. v. John Doe, 385 F.Supp.2d 969, 971 (N.D. Cal. 2005) (relying on the Seescandy.com  
25 standard in granting defendant’s motion to quash in part because defendant’s online statements  
26 were found to be “sardonic commentary”, rather than made “in connection with commercial  
27 services”, as alleged by plaintiff in support of its claims for trademark infringement).

28 Plaintiff easily meets this standard.

1                   **A. Plaintiff Has Identified the Defendant With Sufficient Specificity.**

2                   First, Plaintiff has sufficiently identified the Defendant such that the Court can determine  
3 the Defendant is a “real person” who can be sued in federal court. *See Seescandy.com*, 185 F.R.D.  
4 at 578-80. Plaintiff has identified the Defendant by the name Defendant provided, as well as by a  
5 unique eBay and PayPal User ID. Johnson Decl. at ¶¶ 4-7. Both eBay and PayPal policies are  
6 such that the user “expdepot” and “shopsmartwithbetterchoice” must authenticate his identity in  
7 order to transact business using these online services. Johnson Decl. at ¶ 3, Ex. A; ¶ 6, Ex. C.

8                   The Defendant used his Third-Party Service Providers accounts to conduct a substantial and  
9 ongoing commercial enterprise. Johnson Decl. at ¶¶ 4-7. These same accounts provide a shield  
10 against identification by Plaintiff and against responsibility for Defendant’s illegal activities.  
11 Unfortunately, Defendant has eluded Plaintiff by providing an invalid address, a possibly fictitious  
12 identity and no other information that is traceable to a valid identity or physical location for  
13 purposes of service of process. Johnson Decl. at ¶ 7; Drey Decl. at ¶ 3. However, due to the  
14 ongoing nature of the relationship between eBay and its users, eBay may possess additional  
15 information provided by the Defendant in response to, for example, requests for additional or  
16 updated information. Johnson Decl. at ¶ 3. PayPal also has an ongoing relationship with its users,  
17 due to the necessity to accurately send and receive payments, and is in a position to provide  
18 information sufficient to identify and locate the Defendant after reviewing its records. Johnson  
19 Decl. at ¶ 6. Yahoo, the Internet provider supporting Defendant’s email address  
20 chang\_luis@yahoo.com, possesses logs and records and is in a position to provide Defendant’s  
21 name and address information. Drey Decl. at ¶ 5. Thus, Defendant is a “real person” who can be  
22 sued in federal court whose name and address is known to eBay, PayPal and Yahoo.

23                   **B. Plaintiff Has Described Its Efforts To Identify the Elusive Defendant.**

24                   Second, Plaintiff has identified the steps it has taken to identify and locate Defendant by  
25 gathering as much information about this Defendant as possible. Johnson Decl. at ¶¶ 4-7; Drey  
26 Decl. at ¶¶ 3-6. Plaintiff has completed a commercial transaction using available online financial  
27 tools and sourced product from the Defendant. Johnson Decl. at ¶¶ 4-7. Plaintiff has conducted  
28

1 online records research and attempted to serve Defendant at various addresses, including the  
2 address which Defendant himself provided as part of his commercial transactions of pirated  
3 software. Drey Decl. at ¶ 3. Regrettably, none of these efforts has led to effective service of  
4 process. Id.

5 Plaintiff can obtain no other information about Defendant Luis Chang without expedited  
6 discovery from the Third-Party Service Providers or similar third-party service providers. Drey  
7 Decl. at ¶¶ 3-7. Plaintiff has selected eBay because eBay has a continuous relationship with its  
8 sellers and requests updated and additional information throughout this relationship. Johnson Decl.  
9 at ¶ 3, Ex. A. Plaintiff has selected Yahoo because its policies are such that users are required to  
10 provide accurate and updated personal information as part of its service agreement. Drey Decl. at ¶  
11 5, Ex. G. Plaintiff has selected PayPal because according to the PayPal terms of use, each PayPal  
12 account is linked with a verified financial account, usually a checking account. Johnson Decl. at ¶  
13 6, Ex. C. Moreover, PayPal's records will most likely yield correct information as the Defendant  
14 will be motivated to ensure that data pertaining to *receipt* of payment for completed sales is  
15 accurate.

16 **C. Plaintiff's Action For Copyright and Trademark Infringement Would**  
17 **Withstand a Motion to Dismiss.**

18 Third, the complaint sufficiently pleads *prima facie* claims for direct copyright and  
19 trademark infringement that can withstand a motion to dismiss. In ruling on a motion to dismiss,  
20 the court must accept all allegations of material fact as true and in a light most favorable to the  
21 non-moving party. Oscar v. University Students Co-op. Assoc., 965 F.2d 783, 785 (9<sup>th</sup> Cir. 1992).  
22 Plaintiff has alleged that it owns and has registered copyrights and trademarks in the works at  
23 issue, and that Defendant copied or distributed those works without Plaintiff's authorization,  
24 intentionally disseminating deceptive products that are likely to cause confusion or mistake to the  
25 public regarding the affiliation, sponsorship, endorsement or approval of the unauthorized product.  
26 *See* Compl. at ¶¶ 5-23. These allegations state claims for copyright and trademark infringement  
27 sufficient to withstand a motion to dismiss.  
28

1                   **a. Plaintiff's Copyright Infringement Claims**

2           Plaintiff's claim for copyright infringement would withstand a motion to dismiss. Copyright  
3 infringement is proved by showing (i) ownership of the copyright and (ii) copying. Shaw v.  
4 Lindheim, 919 F.2d 1353, 1356 (9th Cir. 1990).

5           A certificate of registration made before publication or within five years after publication is  
6 *prima facie* evidence of copyright validity and of the facts stated in the certificate. 17 U.S.C. §  
7 410(c). Relevant registrations and their present validity and effectiveness are alleged in the  
8 Complaint. Compl. at ¶¶ 8, 20.

9           Copying can be proved by proof of access and substantial similarity between the  
10 copyrighted property and the infringing item. Johnson Controls, Inc. v. Phoenix Control Systems,  
11 Inc., 886 F.2d 1173, 1176 (9th Cir. 1989). The copying here is virtually identical.

12           Access to Plaintiff's works is undeniable and may be presumed as a result of widespread  
13 distribution and longstanding renown. D.C. Comics, Inc. v. Bobtron Int'l., Inc., 1990 U.S. Dist.  
14 LEXIS 9107, at \*2 (S.D.N.Y. July 25, 1990).

15           A two-part test applies to determine substantial similarity. The "extrinsic" part of the test  
16 focuses on similarities of ideas and requires an objective analysis of specific criteria. Apple  
17 Computer, Inc. v. Microsoft Corp., 35 F.3d 1435, 1442 (9th Cir. 1994), *cert. denied* 513 U.S. 1184,  
18 130 L.Ed.2d 1129, 115 S.Ct. 1176 (1995). The "intrinsic" part of the test focuses on the similarity  
19 of expression. Id. Both parts of the test are easily met here because the works are so nearly  
20 identical that "the possibility of independent creation is precluded." Twentieth Century Fox Film  
21 Corp. v. MCA, Inc., 715 F.2d 1327, 1330 (9th Cir. 1983) (granting summary judgment for plaintiff  
22 where works were "overwhelmingly identical"). In fact, Defendant even advertised the product as  
23 that of Plaintiff's works.

24           Plaintiff has alleged that its computer software programs were copied and distributed  
25 without authorization. Thus, there is no question concerning the sufficiency of Plaintiff's  
26 pleadings on the copyright infringement claim.

**b. Plaintiff's Trademark Infringement Claims**

Plaintiff's claim for trademark infringement would withstand a motion to dismiss. Registration of a mark on the principal register is "prima facie evidence... of the registrant's ownership of the mark, and of the registrant's exclusive right to use the registered mark in commerce..." 15 U.S.C. § 1115(a); Vigil v. Walt Disney Co., 1995 U.S. Dist. LEXIS 15560, at \*5 (N.D. Cal. Oct. 16, 1995); Levi Strauss & Co. v. Blue Bell, Inc., 778 F.2d 1352, 1354 (9<sup>th</sup> Cir. 1985) (registration by the trademark holder constitutes *prima facie* evidence of a protected interest with respect to the good specified in the registration). Relevant registrations and their present validity and effectiveness are alleged in the Complaint. Compl. at ¶¶ 8, 20.

The test for infringement of a federally registered trademark under the Trademark Act of 1946 ("Lanham Act") is whether the alleged infringing act creates a likelihood of confusion. Seescandy.com, 185 F.R.D. at 580. In determining likelihood of confusion, the Ninth Circuit has adopted the Sleekcraft test, balancing the following factors: (1) strength of the mark; (2) proximity of the goods; (3) similarity of the marks; (4) evidence of actual confusion; (5) marketing channels used; (6) type of goods and degree of care consumers are likely to exercise in purchasing them; (7) intent of the defendant in selecting the mark; and (8) likelihood that the parties will expand their product lines. AMF, Inc. v. Sleekcraft Boats, 599 F.2d 341, 348-54 (9<sup>th</sup> Cir. 1979). In addition, when the alleged infringer knowingly adopts a mark similar to another's, there is a presumption that the public will be deceived. M2 Software, Inc. v. Madacy Entm't, 421 F.3d 1073, 1085 (9<sup>th</sup> Cir. 2005). These factors all demonstrate Defendant's infringement of Plaintiff's trademarks:

1. Strength of the Trademark: Plaintiff's marks are exceptionally strong as they identify Plaintiff's high quality products such that they have acquired secondary meaning in the minds of consumers throughout the world. Compl. at ¶¶ 9-11.
2. Proximity of goods: Plaintiff alleges in its Complaint that long after Plaintiff's registration and use of Plaintiff's trademarks, Defendant duplicated Plaintiff's marks on counterfeit merchandise. Compl. at ¶¶ 14-18, 25-26.



1           3.     Similarity of the Marks: Defendant has sought to capitalize on Plaintiff's strong  
2 marks by copying them with no variation from their authorized versions.

3           4.     Evidence of Actual Confusion: Purchases made by third-parties of Defendant's  
4 unauthorized, piratical product evidences actual confusion. Compl. at ¶¶ 16-18, 25-26.

5           5.     Marketing Channels Used: Defendant's product is software created for use in  
6 computer applications – a class of goods for which Plaintiff has trademark registrations.

7           6.     Type of Goods and Care Likely to be Exercised by the Purchaser: Defendant has  
8 duplicated Plaintiff's products so that consumers cannot differentiate between illegal and legitimate  
9 products at the point of purchase. Compl. at ¶¶ 16-18, 25-26. Modern consumers, who are aware  
10 of the sensitivity of quality computer products look to Plaintiff's marks for assurance of Plaintiff's  
11 developed and maintained goodwill and reputation for high quality products. Compl. at ¶¶ 9, 11.

12           7.     Defendant's Intent in Selecting the Mark: Defendant's intention to confuse the  
13 public is self-evident. When a person knowingly adopts a mark identical to another's mark, the  
14 Court may infer that person's intent to confuse. M2 Software, 421 F.3d at 1085 (willful use creates  
15 a presumption of public deception).

16           8.     Likelihood of Expansion of Product Lines: Plaintiff is already using its trademarks  
17 in the class of goods and services exploited by Defendant. Further, Defendant's intention to expand  
18 his product line is irrelevant as Defendant is operating an illegitimate business practice whose  
19 existing product line consists of pirated goods.

20           Thus, Plaintiff is a valid trademark holder and has sufficiently alleged in its pleadings a  
21 likelihood of confusion under the Sleekcraft factors to withstand a motion to dismiss on the  
22 trademark infringement claim.

23           **D. Plaintiff Has Justified the Discovery.**

24           Fourth, Plaintiff has justified the need for the discovery requested. Plaintiff cannot wait  
25 until after the Fed. R. Civ. P. 26(f) Conference of Parties to propound this discovery because of the  
26 inability to serve the Defendant with process, thereby making any such resulting conference  
27

impossible. Plaintiff has limited the subject matter concerning the discovery and has proposed an Order incorporating safeguards which permits the individual affected to object.

**E. Plaintiff Has Shown Good Cause.**

Plaintiff also easily satisfies the “good cause” standard for allowing early discovery applied by some courts. *See Semitool, Inc. v. Tokyo Electron Am., Inc.*, 208 F.R.D. 273, 275-76 (N.D. Cal. 2002); *Qwest Comm. Int’l, Inc. v. WorldQuest Networks, Inc.*, 213 F.R.D. 418, 419 (D. Colo. 2003); *Entertainment Tech. Corp. v. Walt Warner Imagineering*, 2003 U.S. Dist. LEXIS 19832, at \*12 (E.D. Pa. 2003) (applying a reasonableness standard; “a district court should decide a motion for expedited discovery on the entirety of the record to date and the reasonableness of the request in light of all of the surrounding circumstances”) (quotations omitted); *Yokohama Tire Corp. v. Dealers Tire Supply, Inc.*, 202 F.R.D. 612, 614 (D. Ariz. 2001) (adopting a good cause standard).

The requirement that parties must meet and confer prior to seeking expedited discovery may be dispensed with if good cause is shown. *Semitool, Inc.*, 208 F.R.D. at 275-76. First, good cause exists where, as here, the complaint alleges claims of infringement. *Id.* at 276; *Qwest Comm.*, 213 F.R.D. at 419 (“The good cause standard may be satisfied . . . where the moving party has asserted claims of infringement and unfair competition.”); *Benham Jewelry Corp. v. Aron Basha Corp.*, 1997 U.S. Dist. LEXIS 15957, at \*58 (S.D.N.Y. Oct. 14, 1997). Copyright infringement claims necessarily involve irreparable harm to plaintiffs. 4 *Nimmer* § 14.06[A], at 14-103; *see also Health Ins. Ass’n of Am. v. Novelli*, 211 F.Supp.2d 23, 28 (D.D.C. 2002) (“A copyright holder [is] presumed to suffer irreparable harm as a matter of law when his right to the exclusive use of copyrighted material is invaded.”) (quotations and citations omitted); *see also Taylor Corp. v. Four Seasons Greetings, LLC*, 315 F.3d 1039, 1041-42 (8th Cir. 2003); *ABKCO Music, Inc. v. Stellar Records, Inc.*, 96 F.3d 60, 66 (2d Cir. 1996).

Plaintiff has also shown a strong chance of success on its trademark infringement claim to warrant a presumption of irreparable harm. *International Kennel Club v. Mighty Star, Inc.*, 846 F.2d 1079, 1092 (7<sup>th</sup> Cir. 1988) (presumption arises upon showing of more than a negligible chance of success). Trademark infringement also “by [its] very nature result[s] in irreparable injury.”



1 PepsiCo, Inc. v. Reyes, 70 F.Supp.2d 1057, 1060 (C.D. Cal. 1999); *see also* Black Hills Jewelry  
 2 Manufacturing Co. v. Gold Rush, Inc., 633 F.2d 746, 753 (8<sup>th</sup> Cir. 1980); Helene Curtis Industries  
 3 v. Church & Dwight Co., 560 F.2d 1325, 1332 (7<sup>th</sup> Cir. 1977); Omega Importing Corp. v. Petri-  
 4 Kine Camera Co., 451 F.2d 1190, 1195 (2d Cir. 1971); Grupo Gamesa S.A. v. Dulceria El Molino  
 5 Inc., 1996 U.S. Dist. LEXIS 13193, at \*10 (C.D. Cal. 1996); Porsche Cars North America Inc. v.  
 6 Manny's Porshop Inc., 972 F.Supp. 1128, 1132 (N.D. Ill. 1997); PepsiCo, Inc. v. Torres, 1993 U.S.  
 7 Dist. LEXIS 17588, at \* 8 (C.D. Cal. 1993).

8  
 9 Second, good cause exists because the narrowly tailored discovery requests do not exceed  
 10 the minimum information required to advance this lawsuit and will not prejudice the Defendant.<sup>1</sup>  
 11 *See Semitool*, 208 F.R.D. at 276 (“Good cause may be found where the need for expedited  
 12 discovery, in consideration of the administration of justice, outweighs the prejudice to the  
 13 responding party.”). There is no prejudice to Defendant because Plaintiff merely seeks information  
 14 to identify Defendant and to serve him with process. Moreover, Plaintiff agrees to use the  
 15 information disclosed pursuant to its subpoenas only for the purpose of protecting its rights under  
 16 the copyright and trademark laws. Moreover, as the subpoenaed Third-Party Service Providers  
 17 will be able to give notice to their subscribers that this information is being sought, any subscriber,  
 18 including Defendant, will have the opportunity to raise any objections before this Court prior to the  
 19 return date of the subpoenas.

20 Third, this lawsuit is currently at a standstill without the limited discovery Plaintiff seeks as  
 21 there is no other information Plaintiff can obtain about the Defendant without discovery from the  
 22 Third-Party Service Providers. Defendant used the services of the Third-Party Service Providers to  
 23 provide cover and to facilitate his illegal activities. Courts regularly permit early discovery where  
 24 such discovery will “substantially contribute to moving th[e] case forward.” *Semitool*, 208 F.R.D.  
 25 at 277; *see also* Best Western International, Inc. v. John Doe, et al., 2006 U.S. Dist. LEXIS 56014,  
 26 at \*3-4 (Ariz. July 25, 2006) “[Plaintiff] has satisfied the good cause requirement. [Plaintiff] has  
 27 established by affidavit that it is unable to identify the John Doe Defendants by means other than

28 <sup>1</sup> Likewise, there is no prejudice to the Third-Party Service Providers since they will be able to seek  
 an Order quashing any subpoenas directed at them or to move this Court for other relief.

1 the subpoenas. ... The case cannot proceed and a Rule 26(f) conference cannot be held until these  
2 Defendants are identified.”).

3 Fourth, “courts have recognized that [Internet service providers] typically retain user  
4 information for only a limited period, ranging from a few days to a few months” and further that  
5 good cause is shown where the information sought may be lost if discovery is delayed. Best  
6 Western, 2006 U.S. Dist. LEXIS at \*3-4 (citing UMG Recordings, Inc. v. Does, 2006 U.S. Dist.  
7 LEXIS 32821, at \*1 (N.D. Cal. Mar. 6, 2006) (“Because the identities of the John Doe Defendants  
8 [are] necessary for this case to proceed and there is reason to believe that those identities may be  
9 lost if discovery is delayed, the Court concludes that [Plaintiff] has established good cause to  
10 conduct discovery before the Rule 26(f) conference.”). Thus, Plaintiff seeks only to gather timely  
11 information from the very sources used by Defendant to further his illegal activities and only for  
12 purposes of conclusively identifying and locating the Defendant so that the lawsuit can proceed.

13 **II. Plaintiff Demonstrates Cause Permitting an Enlargement of Time Within Which to**  
14 **Effect Service of Process.**

15 Plaintiff respectfully requests that, pursuant to Rule 6(b), the Court grant a sixty (60) day  
16 enlargement of time within which to effect service of Summons and Complaint.

17 When by these rules or by a notice given thereunder or by order of  
18 court an act is required or allowed to be done at or within a specified  
19 time, the court for *cause shown* may at any time in its discretion (1)  
20 with or without motion or notice order the period enlarged if request  
21 therefor is made before the expiration of the period originally  
22 prescribed or as extended by a previous order . . .

23 Fed. Rule Civ. P. 6(b) (emphasis added). Plaintiff filed its Complaint on or about May 12, 2008.

24 Per Rule 4(m),<sup>2</sup> Plaintiff must effect service of Summons and Complaint on Defendant on or about

25  
26 <sup>2</sup> “If service of the summons and complaint is not made upon a defendant within 120 days after the  
27 filing of the complaint, the court, upon motion or on its own initiative after notice to the plaintiff,  
28 shall dismiss the action without prejudice as to that defendant or direct that service be effected  
within a specified time; provided that if the plaintiff shows good cause for the failure, the court  
shall extend the time for service for an appropriate period.” Efaw v. Williams, 473 F.3d 1038,  
1041 (9th Cir. 2007) (*quoting* Fed. R. Civ. P. 4(m)).

1 September 9, 2008. Accordingly, Plaintiff submits its request for an enlargement of time “before  
2 the expiration of the period originally prescribed” by Rule 4(m). Fed. Rule Civ. P. 6(b).

3  
4 Moreover, “[d]istrict courts have broad discretion to extend time for service under Rule  
5 4(m). . . . [as] Rule 4’s 120-day time period for service ‘operates not as an outer limit subject to  
6 reduction, but as an irreducible allowance.’” Efaw v. Williams, 473 F.3d 1038, 1041 (9th Cir.  
7 2007) (*quoting* Henderson v. United States, 517 U.S. 654, 661, 116 S. Ct. 1638, 134 L. Ed. 2d 880  
8 (1996)). Further, “‘Rule 4(m) explicitly permits a district court to grant an extension of time to  
9 serve the complaint after that 120-day period.’” Id. (*quoting* Mann v. Am. Airlines, 324 F.3d 1088,  
10 1090 (9th Cir. 2003) (“On its face, Rule 4(m) does not tie the hands of the district court after the  
11 120-day period has expired.”)). Pursuant to Fed. R. Civ. P. 4(m), a district court is required to  
12 grant an extension of time for service if good cause is shown and permitted to grant such an  
13 extension even absent good cause. Mann, 324 F.3d at 1090, n. 2 (*citing* Henderson, 517 U.S. at  
14 662)).

15 Here, Plaintiff’s actions demonstrate good cause for granting an enlargement of time to  
16 effect service upon the Defendant. First, as discussed previously, Plaintiff has in good faith made  
17 significant attempts to identify, locate and serve Defendant within the 120 day period. *See* Drey  
18 Decl. at ¶ 3. Since the filing of the Complaint, Plaintiff has researched available public records,  
19 including extensive research on Lexis-Nexis and by other means, in search of contact information  
20 for Defendant, including any and all possible aliases, dba’s, email addresses, websites and physical  
21 locations. Id. Plaintiff filed the Complaint in this Action on or May 12, 2008. Since that time,  
22 Plaintiff has attempted to serve Defendant at various locations to no avail. Id. Accordingly,  
23 Plaintiff’s efforts to effect service commencing in May 2008 demonstrate good faith effort to  
24 diligently prosecute this Action and good cause for an enlargement of time.

25 Second, Defendant will not suffer prejudice by virtue of the delayed service. Pursuant to  
26 Rule 4(m), Plaintiff is to serve Defendant on or about September 9, 2008. Drey Decl. at ¶ 2.  
27 Plaintiff requests only an extension of 60 days within which to serve Defendant. Accordingly, this  
28 is not a significant delay during which memories may fade or evidence be lost that would prejudice

1 Defendant. Id. But see Efaw v. Williams, 473 F.3d at 1041 (finding that an extraordinary delay of  
2 seven years prejudiced Defendant).

3 Finally, assuming *arguendo* that Plaintiff's Application for leave to take immediate  
4 discovery is granted, Plaintiff demonstrates good cause for its request for an enlargement of time of  
5 an additional 60 days within which to effect service on Defendant. Though Plaintiff is diligently  
6 prosecuting this action and making every attempt to serve Defendant within the prescribed 120  
7 days, Defendant's deliberate concealment of his location and evasion of service have left Plaintiff  
8 no recourse other than to seek information from Third-Party Service Providers. In doing so,  
9 Plaintiff must wait 21 days for the information from the Third-Party Service Providers and  
10 subsequently analyze the information produced to identify and locate the Defendant. Plaintiff will  
11 thereafter attempt service and must again await the response and any additional information  
12 obtained by the process server. Likely, Plaintiff will be required to re-attempt service on the  
13 evasive Defendant on multiple occasions. Under the circumstances, Plaintiff demonstrates that it is  
14 diligently prosecuting the Action and good cause exists for a 60 day enlargement of time within  
15 which to serve the Defendant.

### 16 CONCLUSION

17 For the foregoing reasons, and as it has no other recourse absent this Court's intervention,  
18 Plaintiff respectfully requests that the Court grant the *Ex Parte* Application and enter an Order  
19 substantially in the form of the attached Proposed Order.

20  
21 DATED: August \_\_, 2008

J. Andrew Coombs, A Professional Corp.

22 By: \_\_\_\_\_

23 J. Andrew Coombs

24 Nicole L. Drey

25 Attorneys for Plaintiff Symantec Corporation

**DECLARATION OF CHRISTOPHER D. JOHNSON**

I, CHRISTOPHER D. JOHNSON, declare as follows:

1. I am an attorney duly admitted to practice before the courts of the Central District of California. I am the owner and principal of Effective Piracy Enforcement, Inc. ("EPE"). Except as otherwise stated, I have personal knowledge of the facts set forth herein and, if called as a witness, I would testify as follows.

2. I served as an Assistant United States Attorney in the Central District of California for fourteen (14) years, including the Computer Crimes and Intellectual Property Enforcement Unit. During my employment as an AUSA, a significant portion of my time was spent prosecuting defendants charged with criminal violations of the Copyright Act. I was also employed as Vice-President for Anti-Piracy by The Walt Disney Company.

3. eBay is an online auction service through which thousands of auctions are posted each day. A directory identifies categories of product in which Internet users can post their auctions, and a search feature allows users to find auctions posted by seller, or to type in key words which allow them to locate all auctions in which that key word appears, either as part of the title or anywhere in the text of the listing. Sellers (and buyers) are designated by "User IDs" which are selected by the eBay user when an account is established. Sellers are required to create a seller's account, which prompts the seller to provide financial account information for purposes of payment of fees charged by eBay. Sellers may elect to change their User IDs at any time, and we have identified some sellers that have multiple User IDs in concurrent use. The eBay auction site appears at www.ebay.com. A true copy of the eBay Privacy Policy is attached hereto as Exhibit A.

4. On or about February 13, 2008, I engaged in an eBay auction posted by eBay user "expdepot" for a copy of Norton PC Anywhere 12.1, advertised as "Symantec PcAnywhere 12.1 Host & Remote PC Anywhere 12.1." I placed the winning bid and payment through PayPal was

1 sent to eBay seller "expdepot," identified as "Luis Chang," with an email address of  
2 "chang\_luis@yahoo.com." A true and correct copy of the redacted printouts confirming my  
3 successful bid of "Symantec PcAnywhere 12.1 Host & Remote PC Anywhere 12.1" sold by  
4 "expdepot" and indicating payment sent to the email address "chang\_luis@yahoo.com" is attached  
5 hereto as Exhibit B.  
6

7 5. I am informed and believe that eBay may possess additional information, beyond  
8 that which was publicly accessible on eBay, due to the ongoing nature of the relationship between  
9 eBay and sellers (i.e. requests for additional and/or updated information).  
10

11 6. Pursuant to the instructions appearing on the posting, I paid using PayPal, as  
12 illustrated in Exhibit B. PayPal, Inc. ("PayPal") is an online payment service through which an  
13 account can be established (much like a bank account) and through which users can pay for (and be  
14 paid for) items sold on eBay and other Internet sites. Pursuant to the PayPal Privacy Policy,  
15 incorporated by reference into the User Agreement, PayPal users must provide a "name, address,  
16 phone, email...and other similar information" to open a PayPal account as well as valid "bank  
17 account numbers and credit card numbers" to make payments through PayPal, all of which is  
18 subject to verification. A true copy of the PayPal Privacy Policy and User Agreement are  
19 collectively incorporated hereto as Exhibit C.  
20

21 7. On or about February 16, 2008, I received a package pursuant to the "Symantec  
22 PcAnywhere 12.1 Host & Remote PC Anywhere 12.1" order which indicated a return address of  
23 "Luis Chang, 19223 E Colima Rd. #790, Rowland Heights CA 91748" (*sic*). A true and correct  
24 copy of the redacted shipping label on the package I received containing a copy of "Symantec  
25 PcAnywhere 12.1 Host & Remote PC Anywhere 12.1" is attached hereto as Exhibit D.  
26

27 ///

28 ///

1 I declare under penalty of perjury under the laws of the United States of America that the  
2 foregoing is true and correct.

3 Executed this 18<sup>th</sup> day of August, 2008, at Los Angeles, California.

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7 CHRISTOPHER D. JOHNSON  
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**DECLARATION OF NICOLE L. DREY**

I, NICOLE L. DREY, declare as follows:

1. I am an attorney at law, duly admitted to practice before the Courts of the State of California and the United States District Court for the Northern District of California. I am an attorney for Plaintiff Symantec Corporation ("Plaintiff") in an action styled Symantec Corporation v. Luis Chang, et al., Case Number C08-2431 JW. Except as otherwise expressly stated to the contrary, I have personal knowledge of the following facts and, if called as a witness, I could and would competently testify as follows.

2. I am informed and believe that Plaintiff filed its Complaint on or about May 12, 2008. I am informed and believe that, pursuant to Rule 4(m), Plaintiff is to serve Defendant on or about September 9, 2008.

3. I am informed and believe that since the filing of the Complaint until the filing of this *ex parte* application, Plaintiff has spent a considerable amount of time and resources tracing all known contact information for Defendant Luis Chang ("Defendant"). As part of these efforts, I am informed and believe that my office conducted online records searches for "Luis Chang," which produced one possible address – 13582 Palcencia Court, Baldwin Park, CA 91706. I am informed and believe that this address does not exist. Attached hereto as Exhibit E is a true and correct copy of the process server's invoice, detailing service attempt. I am informed and believe that the only other address linked to Defendant was the address provided on the shipping label of the eBay transaction – "Luis Chang, 19223 E Colima Rd. #790, Rowland Heights CA 91748" (*sic*). I am informed and believe that this address is a private post office box facility. I am informed and believe that the process server was informed that the owner of box #790 had not picked up his mail in months and had allowed the box to go unpaid for.



1           4. I am informed and believe that research by my office also uncovered an additional  
2 eBay user ID used by Defendant – “shopsmartwithbetterchoice.” I am informed and believe that as  
3 of August 2008, there is a limited amount of publicly accessible information available through  
4 eBay.com pertaining to user IDs “expdepot” and “shopsmartwithbetterchoice.” Attached hereto as  
5 Exhibit F are printouts of the eBay Member User ID Histories for “expdepot” and  
6 “shopsmartwithbetterchoice.”  
7

8           5. Yahoo! Inc. (“Yahoo”) is an Internet service provider which supports yahoo.com  
9 email addresses. Pursuant to Yahoo’s Privacy Policy, users are to provide “personal information”  
10 upon registration, which includes “name, email address, birth date, gender, ZIP code, occupation,  
11 industry, and personal interests. For some financial products and services [Yahoo] might also ask  
12 for [the registrant’s] address, Social Security number, and information about [the registrant’s]  
13 assets.” Moreover, pursuant to Yahoo’s Terms of Service, users may not use Yahoo’s services to  
14 “upload, post, email, transmit or otherwise make available any Content that infringes any patent,  
15 trademark, trade secret, copyright or other proprietary rights...of any party.” True and correct  
16 copies of Yahoo’s Privacy Policy and Terms of Service are attached hereto as Exhibit G.  
17

18           6. The requested Order granting Plaintiff’s Application for Leave to Take Immediate  
19 Discovery is Plaintiff’s only remaining method available to identify and locate Defendant. Without  
20 expedited discovery, Plaintiff has no way of serving Defendant with the Complaint and Summons  
21 in this case. Plaintiff does not conclusively have Defendant’s true name(s), address(es), e-mail  
22 address(es), or any other way to identify or locate Defendant. As described in the declarations and  
23 as evidenced by the Exhibits attached hereto, the eBay User ID is linked to an inconclusive address  
24 and possibly a fictitious name, supplied to eBay when “expdepot” established his user account with  
25 eBay.  
26  
27  
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7. Should the information provided by eBay, PayPal and Yahoo provide a postal mailbox address or otherwise invalid information, their identification of Defendant's financial institution(s) will enable Plaintiff to seek leave to take additional discovery from the identified financial institution if that is required to identify Defendant.

8. Obtaining the identity of copyright infringers on an expedited basis is critical to prosecution of this action and stopping the continued infringement of Plaintiff's software. Defendant's true identity and location remains unknown.

I declare under penalty of perjury that the foregoing is true and correct under the laws of the United States of America.

Executed this 20<sup>TH</sup> day of August, 2008, at Glendale, California.

  
NICOLE L. DREY

**EXHIBIT A**

[Home](#) > [Help Topics](#) > [Rules and Policies](#) > [Rules for Everyone](#) > eBay Privacy Policy

## eBay Privacy Policy

This policy tells you about how we use and protect your personal information. To see a summary of this policy, and for more information to answer your privacy concerns, please go to our [Privacy Central](#) page. We are a TRUSTe licensee. If we do not respond to your question, please contact TRUSTe at [http://www.truste.org/consumers/watchdog\\_complaint.php](http://www.truste.org/consumers/watchdog_complaint.php). For more information on TRUSTe, please go to [www.truste.org](http://www.truste.org). The TRUSTe program covers only information that is collected through the websites covered by this policy. It does not cover information that may be collected through software downloaded from these sites.



### Contents

- [Scope](#)
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### Scope

This Privacy Policy describes how we handle your personal information for our services on the eBay websites. It applies generally to the eBay.com website and other related websites where this policy appears in the footer of the page. Some eBay-branded websites or websites we operate may be governed by separate privacy policies. The policy that applies on any of our domains or subdomains is always the policy that appears in the footer of each website.

Our subsidiaries' and joint ventures' privacy practices are similar to those described in this Privacy Policy. Subject to the requirements of applicable law, we strive to provide a consistent set of privacy practices throughout the global eBay trading community. By accepting the Privacy Policy and the User Agreement in registration, you expressly consent to our collection, storage, use and disclosure of your personal information as described in this Privacy Policy. This Privacy Policy is effective upon acceptance for new users and is otherwise effective on July 9, 2007.

### Collection

You can browse our sites without telling us who you are or revealing any personal information about yourself. Once you give us your personal information, you are not anonymous to us. If you choose to provide us with personal information, you consent to the transfer and storage of that information on our servers located in the United States.

We may collect and store the following personal information:

- email address, physical contact information, and (depending on the service used) sometimes financial information, such as credit card or bank account numbers;
- transactional information based on your activities on the sites (such as bidding, buying, selling, item and content you generate or that relates to your account);

- shipping, billing and other information you provide to purchase or ship an item;
- community discussions, chats, dispute resolution, correspondence through our sites, and correspondence sent to us;
- other information from your interaction with our sites, services, content and advertising, including computer and connection information, statistics on page views, traffic to and from the sites, ad data, IP address and standard web log information;
- information from other companies, such as demographic and traffic data; and
- other supplemental information from third parties (for example, if you incur a debt to eBay, we will generally conduct a credit check by obtaining additional information about you from a credit bureau, as permitted by law; or if the information you provide cannot be verified, we may ask you to send us additional information, such as your driver license, credit card statement, or a recent utility bill or other information confirming your address, or to answer additional questions online to help verify your information).

## Marketing

We don't sell or rent your personal information to third parties for their marketing purposes without your explicit consent. We may combine your information with information we collect from other companies and use it to improve and personalize our services, content and advertising. If you don't wish to receive marketing communications from us or participate in our ad-customization programs, simply indicate your preference once you sign-on in My eBay (or similar account status page) or by following the directions provided in an email or from a link on the advertisement.

## Use

Our primary purpose in collecting personal information is to provide you with a safe, smooth, efficient, and customized experience. You agree that we may use your personal information to:

- provide the services and customer support you request;
- resolve disputes, collect fees, and troubleshoot problems;
- prevent potentially prohibited or illegal activities, and enforce our User Agreement;
- customize, measure and improve our services, content and advertising;
- tell you about targeted marketing, service updates, and promotional offers based on your communication preferences; and
- compare information for accuracy, and verify it with third parties.

## Our Disclosure of Your Information

We may disclose personal information to respond to legal requirements, enforce our policies, respond to claims that a listing or other content violates the rights of others, or protect anyone's rights, property, or safety.

We may also share your personal information with:

- Members of our corporate family to help detect and prevent potentially illegal acts and provide joint content and services (for example, registration, transactions and customer support). Our corporate affiliates will send marketing communications only to users who request these services.
- Service providers under contract who help with our business operations (such as fraud investigations, bill collection, affiliate and rewards programs and co-branded credit cards).
- Other third parties to whom you explicitly ask us to send your information (or about whom you are otherwise explicitly notified and consent to when using a specific service).
- Law enforcement or other governmental officials, in response to a verified request relating to a criminal investigation or alleged illegal activity. In such events, we will disclose information relevant to the investigation, such as name, city, state, zip code, telephone number, email address, User ID history, IP address, fraud complaints, and bidding and listing history.
- eBay VeRO Program participants under confidentiality agreement, as we in our sole discretion believe necessary or appropriate in connection with an investigation of fraud, intellectual property infringement, piracy, or other unlawful activity. In such events, we will disclose name, street address, city, state, zip code, country, phone number, email address and company name.
- Other business entities, should we plan to merge with or be acquired by that business entity. (Should such a combination occur, we will require that the new combined entity follow this privacy policy with respect to your personal information. If your personal information will be used contrary to this policy, you will receive prior notice.)

Without limiting the above, in an effort to respect your privacy and our ability to keep the community free from bad actors, we will not otherwise disclose your personal information to law enforcement, other government officials, or other third parties without a subpoena, court order or substantially similar legal procedure, except when we believe in good faith that the disclosure of information is necessary to prevent imminent physical harm or financial loss or to report suspected illegal activity.

## Activity Associated with User IDs

Your User ID is displayed throughout eBay and is therefore available to the public. All of your activity on our sites is traceable to your User ID. Other people can see your bids, items that you have purchased in the past, items for sale, storefronts, feedback, ratings and associated comments, and so on. Notices are sent to other community members regarding suspicious activity and policy violations on our sites and refer to User IDs and specific items. Therefore, if you associate your name with your User ID, the people to whom you have revealed your name will be able to personally identify your eBay activities.

### Using Information from eBay

eBay enables you to share personal and financial information to complete transactions. We encourage you to disclose your privacy practices and respect the privacy of other users. We cannot guarantee the privacy or security of your information and therefore we encourage you to evaluate the privacy and security policies of your trading partner before entering into a transaction and choosing to share your information. To help protect your privacy, we allow only limited access to other users' contact, shipping and financial information to facilitate your transactions. When users are involved in a transaction, they may have access to each other's name, User ID, email address and other contact and shipping information. In all cases, you must give other users a chance to remove themselves from your database and a chance to review what information you have collected about them.

You agree to use user information only for:

- eBay transaction-related purposes that are not unsolicited commercial messages;
- using services offered through eBay (e.g. escrow, insurance, shipping and fraud complaints), or
- other purposes that a user expressly chooses.

### Cookies

We use "cookies" (small files placed on your hard drive) on certain of our pages to help analyze our web page flow; customize our services, content and advertising; measure promotional effectiveness, and promote trust and safety. For more information about why we use cookies, see [Cookies](#), [Web Beacons](#), and [Your Privacy](#).

A few important things you should know about cookies are that:

- We offer certain features that are available only through the use of cookies.
- We use cookies to help identify you and maintain your signed-in status.
- Most cookies are "session cookies," meaning that they are automatically deleted from your hard drive at the end of a session.
- You are always free to decline our cookies if your browser permits, although doing so may interfere with your use of some of our sites or services.
- You may encounter cookies from third parties on certain pages of the sites that we do not control. (For example, if you view a web page created by another user, there may be a cookie placed by that web page.)

### No Spam, Spyware or Spoofing

We and our users do not tolerate spam. Make sure to set your eBay notification preferences so we communicate to you as you prefer. You are not licensed to add other eBay users, even a user who has purchased an item from you, to your mailing list (email or physical mail) without their express consent. To report eBay-related spam or spoof emails to eBay, please forward the email to [spam@ebay.com](mailto:spam@ebay.com) or [spoof@ebay.com](mailto:spoof@ebay.com). You may not use our communication tools to send spam or otherwise send content that would violate our User Agreement. We automatically scan and may manually filter messages to check for spam, viruses, phishing attacks and other malicious activity or illegal or prohibited content, but we do not permanently store messages sent through these tools. If you send an email to an email address that is not registered in our community (via Refer-a-Friend or other tools), we do not permanently store that email or use that email address for any marketing purpose. We do not rent or sell these email addresses.

### Account Protection

Your password is the key to your account. Use unique numbers, letters and special characters, and do not disclose your eBay password to anyone. If you do share your password or your personal information with others, remember that you are responsible for all actions taken in the name of your account. If you lose control of your password, you may lose substantial control over your personal information and may be subject to legally binding actions taken on your behalf. Therefore, if your password has been compromised for any reason, you should immediately notify eBay and change your password.

### Accessing, Reviewing and Changing Your Personal Information

You can see, review and change most of your personal information by signing on to eBay. Generally, we will not manually modify your personal information because it is very difficult to verify your identity remotely. You must promptly update your personal information if it changes or is inaccurate. Once you make a public posting, you may not be able to change or remove it. Upon your request, we will close your account and remove your personal information from view as soon as reasonably possible, based on your account activity and in accordance with applicable law. We do retain personal information from closed

accounts to comply with law, prevent fraud, collect any fees owed, resolve disputes, troubleshoot problems, assist with any investigations, enforce our [eBay User Agreement](#), and take other actions otherwise permitted by law.

### Security

Your information is stored on our servers located in the United States. We treat data as an asset that must be protected and use lots of tools (encryption, passwords, physical security, etc.) to protect your personal information against unauthorized access and disclosure. However, as you probably know, third parties may unlawfully intercept or access transmissions or private communications, and other users may abuse or misuse your personal information that they collect from the site. Therefore, although we work very hard to protect your privacy, we do not promise, and you should not expect, that your personal information or private communications will always remain private.

### Third Parties

Except as otherwise expressly included in this Privacy Policy, this document addresses only the use and disclosure of information we collect from you. If you disclose your information to others, whether they are bidders, buyers or sellers on our sites or other sites throughout the internet, different rules may apply to their use or disclosure of the information you disclose to them. eBay does not control the privacy policies of third parties, and you are subject to the privacy policies of those third parties where applicable. We encourage you to ask questions before you disclose your personal information to others.

### General

We may amend this Privacy Policy at any time by posting the amended terms on this site. All amended terms automatically take effect 30 days after they are initially posted on the Site. In addition, we will notify you through the eBay Message Center. If your questions are not answered online, you may write to us at: eBay Inc. Attn: Legal - Global Privacy Practices, 2145 Hamilton Avenue, San Jose, California 95125, or using the [Contact Us](#) form.

### Related Help topics

- [Appendix to Privacy Policy](#)
- [Unsolicited Email \(Spam\)](#)
- [eBay User Agreement](#)
- [Managing Your Account with My eBay](#)

### Contact Customer Support

- ☒ If you have an additional question about this subject, [email us](#) at Customer Support.  
If you would like to ask a question on another subject, please use the [Contact Us](#) page.





**EXHIBIT B**





Sign out

Buy Sell My eBay Community Help

Site Map

All Categories

Search

Advanced Search

Categories ▾ Motors Express Stores

\$10 back with eBay™ MasterCard

Back to My eBay

Listed in category: [Computers & Networking](#) > [Software](#) > [Internet Related Utilities](#) > [Remote Access](#)

Symantec pcAnywhere 12.1 Host &amp; Remote PC Anywhere 12.1

Item number: 156245475417

Your PayPal payment has been sent. Thank you.

Leave Feedback &gt;

Your feedback lets other eBay users know what your experience has been with this seller.

## Next Steps:

Track all of your bidding and buying activities in [My eBay](#).

♥ Add this seller to my Favorite sellers in My eBay.

[View larger picture](#)Buy Now price: **US \$23.95**Ended: **Feb-14-08 07:10:33 PST**Shipping costs: **US \$1.95**  
US Postal Service First Class Mail®  
Service to [United States](#)  
([more services](#))Ships to: **United States**Item location: **Baldwin Park, CA, United States**Quantity: **0 available**History: [Purchases](#)You can also: [Email to a friend](#)

## Meet the seller

Seller: [expdepot \(163 ☆\)](#)Feedback: **99.4% Positive**

Member: since Feb-08-06 in United States

- \* [See detailed feedback](#)
- \* [Ask seller a question](#)
- \* [Add to Favorite Sellers](#)
- \* [View seller's other items](#)

## Buy safely

1. Check the seller's reputation  
Score: 163 | 99.4% Positive  
[See detailed feedback](#)

2. Check how you're protected

**PayPal** Up to \$2,000 in buyer protection. [See eligibility](#)Returns: Seller accepts returns.  
[7 Days Money Back](#)Listing and payment details: [Show](#)

## Description

## Item Specifics

Antivirus &amp; Utilities Type: Remote Access

Platform: **Windows (PC)**

## Description

## Symantec pcAnywhere Host & Remote v.12.1 Complete

### VISTA READY

Symantec pcAnywhere is the world's leading remote control solution. Its integrated tools make it easy for helpdesk personnel to resolve server and workstation problems. Robust security prevents unauthorized access to enterprise resources. File transfer users will appreciate the ability to manage

multiple files and then work uninterrupted while the files are transferring.

Host & Remote licensing allows two-way communication, allowing the computer to remotely control, or be remotely controlled by other computers running pcAnywhere. Connections can take place via modem, network, Internet, or direct cable connection

### **New Features:**

- Windows Vista host support enables management of Windows Vista computers from any pcAnywhere remote system.
- Mac OS X Universal support provides remote control capability across both PowerPC and Intel-based Mac systems.

### **Main Features:**

- Host Invitation feature allows end users to establish a reverse (outbound) connection to the helpdesk without knowing IP addresses.
- Gateway functionality makes it easier for remote users to access the pcAnywhere hosts they need.
- Single Session Manager combines pcAnywhere Manager and all active sessions into one tabbed window view.
- Allows Microsoft Windows, Linux, Mac OS X Universal, and Microsoft Pocket PC remote systems to connect to Windows, Linux, and Mac OS X Universal hosts.
- Connection wizard guides new users through their initial client-host connection.
- Powerful file-transfer capabilities allow users to upload and download files across different platforms.
- Mandatory password protection and login encryption help ensure that only authorized users can access a pcAnywhere host.
- Uses FIPS 140-2-validated encryption up to AES 256-bit.
- Bandwidth Auto-Detect automatically maximizes pcAnywhere performance for each type of connection.
- Remote Management tools provide direct access to vital operating system utilities (such as Command Prompt, Task Manager, and Services) on the host system.

### **System Requirements:**

pcAnywhere Windows Host, Remote & Gateway

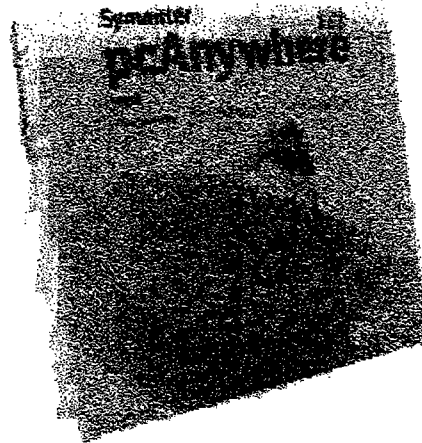
- Windows Vista (Home Basic, Home Premium, Business, Enterprise, Ultimate)
- Windows XP Home & Pro, Windows XP Tablet & Media Center Edition
- Windows XP Embedded and Windows Embedded for POS
- Windows 2000 Pro/Server/Adv Server
- Windows 2003 Server (Standard & Enterprise)

### **Required for all Windows installations:**

- 35 MB of available hard disk space
  - 233MHz or faster processor
  - 128 MB of RAM
  - CD or DVD drive
- Microsoft Internet Explorer 6.0 SP1 or later

- This is a new disc in original sleeve (as packaged direct from authorized distributor). With not shipped with the box or printed

material. User manual can be found on the CD. You install, use . . . no problem



00082

What's your Credit Score? 720? 650? Find Out From Experian.

### Shipping and handling

**Ships to**  
United States

Country:

Shipping and Handling	Each Additional Item	To	Service	Insurance
US \$1.95	+ \$1.95	United States	US Postal Service First Class Mail® Estimated delivery 2-5 days*	US \$2.00 Optional
US \$6.95	+ \$6.95	United States	US Postal Service Priority Mail® Estimated delivery 2-3 days*	US \$2.00 Optional

\*Sellers are not responsible for service transit time. This information is provided by the carrier and excludes weekends and holidays. Note that transit times may vary, particularly during peak periods.

### Sales tax

Seller charges sales tax for items shipped to: CA (8.250%).

### Return policy

**Item must be returned within:**

7 Days

**Refund will be given as:**

Money Back

**Return policy details:**

Item must be returned within: 7 Days Refund will be given as: Money Back

Return Policy Details: Refund will be given as: Money Back

Return Policy Details: Damage goods will be accept for exchange, or refund. Shipping cost will not be Refunded. If goods lose during shipping, we will not be responsible. You have to purchase insurance with shipping.

Exhibit B, Page 27



My Account

Send Money

Request Money

Merchant Services

Auction Tools

Products &amp; Services

## Transaction Details

eBay Payment Sent (ID # 6YN49014E00717158)

Total Amount: -\$27.88 USD

Date: Feb. 13, 2008

Time: 21:58:29 PST

Status: Completed

Item #	Item Title	Qty	Price	Subtotal
150215475417	Symantec PcAnywhere 12.1 Host & Remote PC Anywhere 12.1	1	\$23.95 USD	\$23.95 USD

Shipping & Handling via USPS First Class Mail  
(includes any seller handling fees): \$1.95 USD

Shipping Insurance (optional): --

Sales Tax (8.250% in CA): \$1.98 USD

**Total: \$27.88 USD**

## Shipping Address:

woodland Hills, CA 91364  
United States  
Confirmed Direct Payment and Virtual Terminal transactions are not covered by PayPal's seller protection policies and programs. [Learn More](#)[Set up your fraud management filters](#)Payment To: Luis Chang (The recipient of this payment is **Verified**)

Seller's ID: expdepot

Seller's Email: chang\_luis@yahoo.com

Funding Type: Instant Transfer

Funding Source: \$27.88 USD - citibank Checking (Confirmed) xxxxxx5162

Back Up Funding Source: MasterCard Card XXXX-XXXX-XXXX-4385

## Shipment Information

Shipping Status: Shipped

Reference Number: U.S. Postal Service 9101128882300176811300 [Learn More](#)

Service Type: First-Class Mail® Parcel (2-5 days)

Package Size: Package/Thick Envelope

Mailing Date: Feb. 13, 2008

Signature Confirmation: No


Display Postage Value on Label: No

Shipping Insurance: No

Ship From: Luis Chang  
19223 E Colima Rd. #790  
Cerritos, CA 90330

Woodland Hills, CA 91364  
United States

Shi, J.

Woodland Hills, CA 91364  
United States  
Confirmed Residential address 

Original Transaction				
Date	Type	Status	Details	Amount
Feb. 13, 2008	Payment To Luis Chang	Completed	...	-\$27.88 USD

Related Transaction				
Date	Type	Status	Details	Amount
Feb. 13, 2008	Add Funds from a Bank Account	Completed	Details	\$27.88 USD

Need help? If you have problems with a transaction or would like assistance settling a dispute with your seller, visit the [Resolution Center](#). PayPal strongly recommends attempting to resolve this issue directly with the merchant or seller whenever possible.

**Description:** Luis Chang

[Return to Log](#)

[Mobile](#) | [Mass Pay](#) | [Money Market](#) | [Debit Card](#) | [Referrals](#) | [About Us](#) | [Accounts](#) | [Fees](#) | [Privacy](#) | [Plus Card](#) |  
[Security Center](#) | [Contact Us](#) | [Legal Agreements](#) | [Developers](#) | [Shops](#)



[About SSL Certificates](#)

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[Information about FDIC pass-through insurance](#)

**EXHIBIT C**

[Sign Up](#) | [Log In](#) | [Help](#) | [Security Center](#)


[Home](#) [Personal](#) [Business](#) [Products & Services](#) [Developers](#)

## Privacy Policy for PayPal Services (including PayPal Money Market Fund)

Country: [Australia \(in English\)](#) | [Austria \(auf Deutsche\)](#) | [Belgium \(in English\)](#) | [Belgium \(en Français\)](#) | [Belgium \(in het Nederlands\)](#) | [Canada \(in English\)](#) | [Canada \(en Français\)](#) | [European Union \(in English\)](#) | [European Union - send only \(in English\)](#) | [France \(en Français\)](#) | [Germany \(auf Deutsch\)](#) | [Italy \(in Italiano\)](#) | [Netherlands \(in English\)](#) | [Netherlands \(in het Nederlands\)](#) | [Poland \(in English\)](#) | [Poland \(po polsku\)](#) | [Spain \(en Español\)](#) | [Switzerland \(auf Deutsch\)](#) | [United States \(in English\)](#) | [Other Countries \(in English\)](#) | [Other Countries \(日本語\)](#)

This Privacy Policy applies to the United States. To view the Privacy Policy for a different country or region, please click the appropriate link above.

This policy describes the ways we collect, store, use and protect your personal information. You accepted this policy when you signed up for our Service. We may amend this policy at any time by posting a revised version on our website. The revised version will be effective at the time we post it. In addition, if the revised version includes a substantial change, we will provide you with 30 days' prior notice by posting notice of the change on the "Policy Updates" page of our website. We last modified this Policy on July 9, 2008.

TRUSTe



1. [How we collect information about you](#)
2. [How we use cookies](#)
3. [How we protect and store personal information](#)
4. [How we use the personal information we collect](#)
5. [How we share personal information with other PayPal users](#)
6. [How we share personal information with other parties](#)
7. [How you can restrict PayPal from sharing your personal information](#)
8. [How you can access or change your personal information](#)
9. [How you can contact us about privacy questions](#)

### How we collect information about you

When you visit the PayPal website, we collect your IP address and standard web log information, such as your browser type and the pages you accessed on our website.

If you open an account, we collect the following types of information from you:

- Contact information - your name, address, phone, email, Skype ID and other similar information.
- Financial information - the bank account numbers and credit card numbers that you link to your PayPal account.

Before permitting you to use our Service, we may require you to provide additional information we can use to verify your identity or address or manage risk, such as your date of birth, social security number or other information. We may also obtain information about you from third parties such as credit bureaus and identity verification services.

When you are using our Service, we collect information about your account transactions and we may collect information about your computer or other access device for fraud prevention purposes.

Finally, we may collect additional information from or about you in other ways not specifically described here. For example, we may collect information related to your contact with our customer support team or store results when you respond to a survey.

### How we use cookies

When you access our website, we, or companies we hire to track how our website is used, may place small data files called "cookies" on your computer.

We send a "session cookie" to your computer when you log in to your account. This type of cookie helps us to recognize you if you visit multiple pages on our site during the same session, so that we don't need to ask you



for your password on each page. Once you log out or close your browser, this cookie expires and no longer has any effect.

We also use longer-lasting cookies for other purposes such as to display your e-mail address on our sign-in form, so that you don't need to retype the e-mail address each time you log in to your account.

We encode our cookies so that only we can interpret the information stored in them. You are free to decline our cookies if your browser permits, but doing so may interfere with your use of our website.

#### **How we protect and store personal information**

Throughout this policy, we use the term "personal information" to describe information that can be associated with a specific person and can be used to identify that person. We do not consider personal information to include information that has been anonymized so that it does not identify a specific user.

We store and process your personal information on our computers in the US, and we protect it by maintaining physical, electronic and procedural safeguards in compliance with applicable US federal and state regulations. We use computer safeguards such as firewalls and data encryption, we enforce physical access controls to our buildings and files, and we authorize access to personal information only for those employees who require it to fulfill their job responsibilities.

#### **How we use the personal information we collect**

Our primary purpose in collecting personal information is to provide you with a safe, smooth, efficient, and customized experience. We may use your personal information to:

- provide the services and customer support you request;
- process transactions and send notices about your transactions
- resolve disputes, collect fees, and troubleshoot problems;
- prevent potentially prohibited or illegal activities, and enforce our User Agreement;
- customize, measure, and improve our services and the content and layout of our website;
- send you targeted marketing, service update notices, and promotional offers based on your communication preferences;
- compare information for accuracy and verify it with third parties.

#### **How we share personal information with other PayPal users**

To process your payments, we need to share some of your personal information with the person or company that you are paying or is paying you. Your contact information, date of sign-up, the number of payments you have received from verified PayPal users, and whether you have verified control of a bank account are provided to other PayPal users who you transact with through PayPal.

If you are buying goods or services and pay through PayPal, we may also provide the seller with your confirmed credit card billing address to help complete your transaction with the seller. The seller is not allowed to use this information to market their services to you unless you have agreed to it.

We work with merchants to enable them to accept payments from you using PayPal. In doing so, a merchant may share information about you with us, such as your email address, when you attempt to pay that merchant. We use this information to confirm to that merchant that you are a PayPal customer and that the merchant should enable PayPal as a form of payment for your purchase.

Regardless, we will not disclose your credit card number or bank account number to anyone you have paid or who has paid you through PayPal, except with your express permission or if we are required to do so to comply with a subpoena or other legal process.

#### **How we share personal information with other parties**

We may share your personal information with:

- Members of the eBay Inc. corporate family – like eBay, Shopping.com or Skype – to provide joint content and services (like registration, transactions and customer support), to help detect and prevent potentially illegal acts and violations of our policies, and to guide decisions about their products, services and communications. Members of our corporate family will use this information to send you marketing communications only if you have requested their services.
- Service providers under contract who help with parts of our business operations; (fraud prevention, bill collection, marketing, technology services). Our contracts dictate that these service providers only use your information in connection with the services they perform for us and not for their own benefit.
- Financial institutions that we partner with to jointly create and offer a product such as the PayPal Plus credit card where we share information with GE Money Bank to determine whether you should receive pre-approved offers for the PayPal Plus credit card. These financial institutions may only use this information to market PayPal-related products, unless you have given consent for other uses.
- Credit bureaus to report outstanding negative balance accounts, as allowed by law.
- Companies that we plan to merge with or be acquired by. (Should such a combination occur, we will require that the new combined entity follow this privacy policy with respect to your personal information. If your personal information could be used contrary to this policy, you will receive prior notice.)
- Law enforcement, government officials, or other third parties when
  - we are compelled to do so by a subpoena, court order or similar legal procedure
  - we need to do so to comply with law
  - we believe in good faith that the disclosure of personal information is necessary to prevent physical harm or financial loss, to report suspected illegal activity, or to investigate violations of our User Agreement.



- Other third parties with your consent or direction to do so.

PayPal will not sell or rent any of your personal information to third parties in the normal course of doing business and only shares your personal information with third parties as described in this policy.

#### How you can restrict PayPal from sharing your personal information

Federal and state laws allow you to restrict the sharing of your personal information in certain instances. However, these laws also state that you cannot restrict other types of sharing. Because we have chosen to refrain from certain types of data sharing, the only type of sharing of your personal information that you may restrict is as follows:

If you do not want PayPal to share your personal information with other financial institutions for the purpose of marketing our jointly offered products to you, please log in to your account and uncheck the box in the Information Sharing section of the Notifications and Information Sharing page. This page can be accessed by going to the **Profile** subtab under the **My Account** tab.

You can also control how we use your contact information to market our services to you in the notifications preferences.

#### How you can access or change your personal information

You can review and edit your personal information at any time by logging in to your account and clicking the **Profile** subtab under the **My Account** tab.

#### How you can contact us about privacy questions

If you have questions or concerns regarding this policy, you should contact us by using [this form](#) or writing to us at PayPal, Attn: Privacy Department, P.O. Box 45950, Omaha, NE 68145-0950. PayPal maintains offices at 2211 N. First Street, San Jose, CA.

PayPal is a TRUSTe licensee. If after contacting PayPal our response to your privacy concern is unsatisfactory, then you may contact TRUSTe by completing the form located at: [http://www.truste.org/consumers/watchdog\\_complaint.php](http://www.truste.org/consumers/watchdog_complaint.php). TRUSTe will serve as a liaison to PayPal to resolve your concerns regarding our privacy practices. Please note that TRUSTe will not intervene for any other type of issue with your account.

[About](#) | [Accounts](#) | [Fees](#) | [Privacy](#) | [Security Center](#) | [Contact Us](#) | [Legal Agreements](#) | [Developers](#) | [Jobs](#) | [Merchant Services](#) | [Mobile](#) | [Plus Card](#) | [Referrals](#) | [Shops](#) | [Mass Pay](#) | [Site Feedback](#)



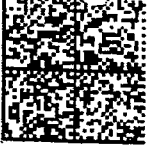

[+]



About SSL Certificates

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[Information about FDIC pass-through insurance](#)

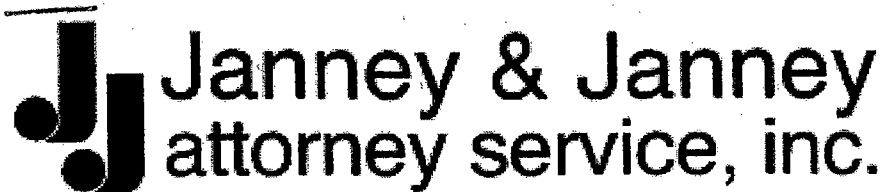
**EXHIBIT D**

 <b>UNITED STATES POSTAL SERVICE</b>		a preferred shipping service on 	
<b>1</b>	US POSTAGE PAID Pitney Bowes		
	02/13/08 From 91748 0 lbs 2 ozs		
	NO SURCHARGE 024P0007617948		
<b>USPS FIRST CLASS MAIL®</b>			
Luis Chang 19223 E Colima Rd. #790 Rowland Heights CA 91748			
<i>#150215475417</i> <i>"EXP depot"</i>			
SHIP TO:  Woodland Hills CA 91364-1416			
<b>ZIP - e/ USPS DELIVERY CONFIRMATION</b>			
			
420 91364 9101 1288 8230 0176 8113 00			
Electronic Rate Approved #128882300			

08-S-1017 "expdepot"  
(Luis Chang)

The safer, easier way to pay **PayPal**

**EXHIBIT E**



**(213) 628-6338**  
 1545 Wilshire Blvd., 311  
 Los Angeles, CA 90017  
 www.janneyandjanney.com  
 IRS 95-3267524

INVOICE DATE: 07/09/2008

INVOICE NUMBER: 1278748-1

Client No. 10713	Route#: LA-5
Client J. ANDREW COOMBS	Server#: 76
Address 517 E. WILSON ST. #202	
GLENDALE, CA 91206	
Phone: (818) 500-3200	Fax: (818) 500-3201
Client File No.:	
Contact: JEREMY	

Case No.: C0802431EMC
Court: USDC - NORTHERN DISTRICT - SAN JOSE
Plaintiff: SYMANTEC CORP
Defendant: CHANG, ET AL.
Servee: LUIS CHANG

Documents:
SEE ATTACHMENT; Notice of Impending Reassignment

DESCRIPTION	SERVICES	CHARGES
Not Found - Returned Unserved. Regarding: LUIS CHANG at 13582 PLACENCIA CT, BALDWIN PARK, CA 91706.  UNABLE TO EFFECT SERVICE AT RESIDENCE ADDRESS GIVEN. NO SUCH STREET FOUND....	Non-Service	.00
INVOICE TOTAL		\$ .00

**EXHIBIT F**



Welcome! Sign in or register.

[Buy](#) | [Sell](#) | [My eBay](#) | [Community](#) | [Help](#)
[Site Map](#)
[All Categories](#)

[Advanced Search](#)
[Categories](#) ▾ [Motors](#) [Express](#) [Stores](#)
[eBay Security & Resolution Center](#)
[Home](#) > [Community](#) > [My World](#) > [expdepot](#)

## eBay My World: expdepot ( 280 ★ )


 Member since: Feb-08-06  
 Location: United States

Views: 343 total

[Items for sale](#)  
[Add to favorite sellers](#)  
[Contact member](#)

### Listings

 This seller currently has  
 no items for sale.

### Feedback earned for transactions on eBay

[View your eBay My World page](#)
**Positive Feedback: 99.6%**
**Feedback score: 280**
[\[How is Feedback calculated?\]](#)

### Detailed Seller Ratings (last 12 months)

Criteria	Average rating	Number of ratings
Item as described	★★★★★	198
Communication	★★★★★	198
Shipping time	★★★★★	198
Shipping and handling charges	★★★★★	198

### Latest Feedback

[See all](#)


Item as described, fast ship, great ebayer, no problems Apr-16-08 16:40

Buyer: davidmr1952 (116 ★)

Item #: 15023320103

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Enter User ID or email address of member

shopsmartwithbetterchoice

Search

No User ID was returned because of one of the following reasons:

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- You have exceeded the number of times per day that you are permitted to use this feature.

[Learn more](#) about this policy or check the email address and try again.

Enter the User ID or email address of the member you would like to find.

Enter a User ID to access a member's profile, items for sale, and eBay Store. You will be shown exact and close matches to help you find the member you are looking for. For security, only limited information is provided when searching by email address. [Learn more](#).

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**EXHIBIT G**

Yahoo!

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# YAHOO! PRIVACY

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## Yahoo! Privacy Policy

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## Yahoo! Privacy Policy

Yahoo! takes your privacy seriously. Please read the following to learn more about our privacy policy.

**NOTICE:** [Click here](#) for practical tips from the federal government and the technology industry to help you guard against Internet fraud, secure your computer and protect your personal information.



### What This Privacy Policy Covers

- This policy covers how Yahoo! treats personal information that Yahoo! collects and receives, including information related to your past use of Yahoo! products and services. Personal information is information about you that is personally identifiable like your name, address, email address, or phone number, and that is not otherwise publicly available.
- This policy does not apply to the practices of companies that Yahoo! does not own or control, or to people that Yahoo! does not employ or manage. In addition, some companies that Yahoo! has acquired have their own, preexisting privacy policies which may be viewed on our [acquired companies page](#).
- Yahoo! participates in the Safe Harbor program developed by the U.S. Department of Commerce and the European Union. To view our certification, visit the U.S. Department of Commerce's [Safe Harbor Web site](#). For more information about Yahoo!'s participation in the Safe Harbor program, please visit our [Safe Harbor details page](#).

### Information Collection and Use

#### General

- Yahoo! collects personal information when you register with Yahoo!, when you use [Yahoo! products or services](#), when you visit Yahoo! pages or the pages of certain Yahoo! partners, and when you enter [promotions or sweepstakes](#). Yahoo! may combine information about you that we have with information we obtain from business partners or other companies.
- When you register we ask for information such as your name, email address, birth date, gender, ZIP code, occupation, industry, and personal interests. For some financial products and services we might also ask for your address, Social Security number, and information about your assets. When you register with Yahoo! and sign in to our services, you are not anonymous to us.
- Yahoo! collects information about your transactions with us and with some of our business partners, including information about your use of financial products and services that we offer.
- Yahoo! automatically receives and records information from your computer and browser, including your [IP address](#), Yahoo! [cookie](#) information, software and hardware attributes, and the page you request.

- Yahoo! uses information for the following general purposes: to customize the advertising and content you see, fulfill your requests for products and services, improve our services, contact you, conduct research, and provide anonymous reporting for internal and external clients.

#### Children

- When a child under age 13 attempts to register with Yahoo!, we ask the child to have a parent or guardian create a Yahoo! Family Account to obtain parental permission.
- Yahoo! does not contact children under age 13 about special offers or for marketing purposes without a parent's permission.
- Yahoo! does not ask a child under age 13 for more personal information, as a condition of participation, than is reasonably necessary to participate in a given activity or promotion.

#### Information Sharing and Disclosure

- Yahoo! does not rent, sell, or share personal information about you with other people or non-affiliated companies except to provide products or services you've requested, when we have your permission, or under the following circumstances:
  - We provide the information to trusted partners who work on behalf of or with Yahoo! under confidentiality agreements. These companies may use your personal information to help Yahoo! communicate with you about offers from Yahoo! and our marketing partners. However, these companies do not have any independent right to share this information.
  - We have a parent's permission to share the information if the user is a child under age 13. Parents have the option of allowing Yahoo! to collect and use their child's information without consenting to Yahoo! sharing of this information with people and companies who may use this information for their own purposes.
  - We respond to subpoenas, court orders, or legal process, or to establish or exercise our legal rights or defend against legal claims.
  - We believe it is necessary to share information in order to investigate, prevent, or take action regarding illegal activities, suspected fraud, situations involving potential threats to the physical safety of any person, violations of Yahoo!'s terms of use, or as otherwise required by law.
  - We transfer information about you if Yahoo! is acquired by or merged with another company. In this event, Yahoo! will notify you before information about you is transferred and becomes subject to a different privacy policy.
- Yahoo! displays targeted advertisements based on personal information. Advertisers (including ad serving companies) may assume that people who interact with, view, or click targeted ads meet the targeting criteria—for example, women ages 18-24 from a particular geographic area.
  - Yahoo! does not provide any personal information to the advertiser when you interact with or view a targeted ad. However, by interacting with or viewing an ad you are consenting to the possibility that the advertiser will make the assumption that you meet the targeting criteria used to display the ad.
  - Yahoo! advertisers include financial service providers (such as banks, insurance agents, stock brokers and mortgage lenders) and non-financial companies (such as stores, airlines, and software companies).

- Yahoo! works with vendors, partners, advertisers, and other service providers in different industries and categories of business. For more information regarding providers of products or services that you've requested please read our detailed [reference links](#).

#### **Cookies**

- Yahoo! may set and access Yahoo! [cookies](#) on your computer.
- Yahoo! lets [other companies](#) that show advertisements on some of our pages set and access their cookies on your computer. Other companies' use of their cookies is subject to their own privacy policies, not this one. Advertisers or other companies do not have access to Yahoo!'s cookies.
- Yahoo! uses [web beacons](#) to access Yahoo! cookies inside and outside our network of web sites and in connection with Yahoo! products and services.

#### **Your Ability to Edit and Delete Your Account Information and Preferences**

##### *General*

- You can edit your [Yahoo! Account Information](#), including your [marketing preferences](#), at any time.
- New categories of marketing communications might be added to the Marketing Preferences page from time to time. Users who visit this page can opt out of receiving future marketing communications from these new categories or they can unsubscribe by following instructions contained in the messages they receive.
- We reserve the right to send you certain communications relating to the Yahoo! service, such as service announcements, administrative messages and the Yahoo! Newsletter, that are considered part of your Yahoo! account, without offering you the opportunity to opt out of receiving them.
- You can delete your Yahoo! account by visiting our [Account Deletion](#) page. Please [click here](#) to read about information that might possibly remain in our archived records after your account has been deleted.

##### *Children*

- Parents can review, edit, and delete information relating to their child's Yahoo! account using tools offered by [Yahoo! Family Accounts](#).
- If a parent chooses not to allow us to further collect or use a child's information, parents enrolled in Yahoo! Family Accounts can delete their child's account by signing into that child's account and then visiting our [Account Deletion](#) page. Please [click here](#) to read about information that might possibly remain in our archived records after your account has been deleted.

#### **Confidentiality and Security**

- We limit access to personal information about you to employees who we believe reasonably need to come into contact with that information to provide products or services to you or in order to do their jobs.
- We have physical, electronic, and procedural safeguards that comply with federal regulations to protect personal information about you.

- To learn more about security, including the security steps we have taken and security steps you can take, please read [Security at Yahoo!](#).

#### Changes to this Privacy Policy

- Yahoo! may update this policy. We will notify you about significant changes in the way we treat personal information by sending a notice to the primary email address specified in your Yahoo! account or by placing a prominent notice on our site.

#### Questions and Suggestions

- [Yahoo! is TRUSTe-certified](#). This certification applies to all English-language sites under the Yahoo.com domain. If you feel that your inquiry has not been satisfactorily addressed, you should contact [TRUSTe](#), an independent privacy organization. TRUSTe serves as a liaison with Yahoo! to resolve your concern.
- If you have questions or suggestions, please complete a [feedback form](#) or you can contact us at:

Yahoo! Inc.  
Customer Care - Privacy Policy Issues  
701 First Avenue  
Sunnyvale, CA 94089  
(408) 349-5070

*Effective Date: November 22, 2006*

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Yahoo!

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## YAHOO! TERMS

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### Yahoo! Terms of Service

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## Yahoo! Terms of Service

### 1. ACCEPTANCE OF TERMS

Yahoo! Inc. ("Yahoo!") welcomes you. Yahoo! provides its service to you subject to the following Terms of Service ("TOS"), which may be updated by us from time to time without notice to you. You can review the most current version of the TOS at any time at: <http://info.yahoo.com/legal/us/yahoo/utos/utos-173.html>. In addition, when using particular Yahoo! owned or operated services, you and Yahoo! shall be subject to any posted guidelines or rules applicable to such services, which may be posted from time to time. All such guidelines or rules (including but not limited to our [Spam Policy](#)) are hereby incorporated by reference into the TOS. Yahoo! may also offer other services that are governed by different Terms of Service. For instance, different terms apply to homesteaders on [Yahoo! GeoCities](#) or members of [AT&T Yahoo! Dial](#) or [AT&T Yahoo! High Speed](#).

### 2. DESCRIPTION OF SERVICE

Yahoo! provides users with access to a rich collection of resources, including various communications tools, forums, shopping services, search services, personalized content and branded programming through its network of properties which may be accessed through any various medium or device now known or hereafter developed (the "Service"). You also understand and agree that the Service may include advertisements and that these advertisements are necessary for Yahoo! to provide the Service. You also understand and agree that the Service may include certain communications from Yahoo!, such as service announcements, administrative messages and the Yahoo! Newsletter, and that these communications are considered part of Yahoo! membership and you will not be able to opt out of receiving them. Unless explicitly stated otherwise, any new features that augment or enhance the current Service, including the release of new Yahoo! properties, shall be subject to the TOS. You understand and agree that the Service is provided "AS-IS" and that Yahoo! assumes no responsibility for the timeliness, deletion, mis-delivery or failure to store any user communications or personalization settings. You are responsible for obtaining access to the Service, and that access may involve third-party fees (such as Internet service provider or airtime charges). You are responsible for those fees, including those fees associated with the display or delivery of advertisements. In addition, you must provide and are responsible for all equipment necessary to access the Service.

Please be aware that Yahoo! has created certain areas on the Service that contain adult or mature content. You must be at least 18 years of age to access and view such areas.

### 3. YOUR REGISTRATION OBLIGATIONS

In consideration of your use of the Service, you represent that you are of legal age to form a binding contract and are not a person barred from receiving services under the laws of the United States or other applicable jurisdiction. You also agree to: (a) provide true, accurate, current and complete information about yourself as prompted by the Service's registration form (the "Registration Data") and (b) maintain and promptly update the Registration Data to keep it true, accurate, current and complete. If you provide any information that is untrue, inaccurate, not current or incomplete, or Yahoo! has reasonable grounds to suspect that such information is untrue, inaccurate, not current or incomplete, Yahoo! has the right to suspend or terminate your account and refuse any and all current or future use of the Service (or any portion thereof). Yahoo! is concerned about the safety and privacy of all its users, particularly children. For this reason, parents of children under the age of 13 who wish to allow their children access to the



Service must create a Yahoo! Family Account. When you create a Yahoo! Family Account and add your child to the account, you certify that you are at least 18 years old and that you are the legal guardian of the child/children listed on the Yahoo! Family Account. By adding a child to your Yahoo! Family Account, you also give your child permission to access many areas of the Service, including, email, message boards and instant messaging (among others). Please remember that the Service is designed to appeal to a broad audience. Accordingly, as the legal guardian, it is your responsibility to determine whether any of the Service areas and/or Content (as defined in Section 6 below) are appropriate for your child.

#### 4. YAHOO! PRIVACY POLICY

Registration Data and certain other information about you is subject to our Privacy Policy. For more information, see our full privacy policy at <http://info.yahoo.com/privacy/us/yahoo/>, or if you came from Yahoo! Kids, then see our Yahoo! Kids privacy policy at <http://www.yahooligans.com/docs/privacy/>. You understand that through your use of the Service you consent to the collection and use (as set forth in the Privacy Policy) of this information, including the transfer of this information to the United States and/or other countries for storage, processing and use by Yahoo! and its affiliates.

#### 5. MEMBER ACCOUNT, PASSWORD AND SECURITY

You will receive a password and account designation upon completing the Service's registration process. You are responsible for maintaining the confidentiality of the password and account and are fully responsible for all activities that occur under your password or account. You agree to (a) immediately notify Yahoo! of any unauthorized use of your password or account or any other breach of security, and (b) ensure that you exit from your account at the end of each session. Yahoo! cannot and will not be liable for any loss or damage arising from your failure to comply with this Section 5.

#### 6. MEMBER CONDUCT

You understand that all information, data, text, software, music, sound, photographs, graphics, video, messages, tags, or other materials ("Content"), whether publicly posted or privately transmitted, are the sole responsibility of the person from whom such Content originated. This means that you, and not Yahoo!, are entirely responsible for all Content that you upload, post, email, transmit or otherwise make available via the Service. Yahoo! does not control the Content posted via the Service and, as such, does not guarantee the accuracy, integrity or quality of such Content. You understand that by using the Service, you may be exposed to Content that is offensive, indecent or objectionable. Under no circumstances will Yahoo! be liable in any way for any Content, including, but not limited to, any errors or omissions in any Content, or any loss or damage of any kind incurred as a result of the use of any Content posted, emailed, transmitted or otherwise made available via the Service.

You agree to not use the Service to:

- a. upload, post, email, transmit or otherwise make available any Content that is unlawful, harmful, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, libelous, invasive of another's privacy, hateful, or racially, ethnically or otherwise objectionable;
- b. harm minors in any way;
- c. impersonate any person or entity, including, but not limited to, a Yahoo! official, forum leader, guide or host, or falsely state or otherwise misrepresent your affiliation with a person or entity;
- d. forge headers or otherwise manipulate identifiers in order to disguise the origin of any Content transmitted through the Service;
- e. upload, post, email, transmit or otherwise make available any Content that you do not have a right to make available under any law or under contractual or fiduciary relationships (such as inside information, proprietary and confidential information learned

or disclosed as part of employment relationships or under nondisclosure agreements);

- f. upload, post, email, transmit or otherwise make available any Content that infringes any patent, trademark, trade secret, copyright or other proprietary rights ("Rights") of any party;
- g. upload, post, email, transmit or otherwise make available any unsolicited or unauthorized advertising, promotional materials, "junk mail," "spam," "chain letters," "pyramid schemes," or any other form of solicitation, except in those areas (such as shopping) that are designated for such purpose (please read our complete [Spam Policy](#));
- h. upload, post, email, transmit or otherwise make available any material that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment;
- i. disrupt the normal flow of dialogue, cause a screen to "scroll" faster than other users of the Service are able to type, or otherwise act in a manner that negatively affects other users' ability to engage in real time exchanges;
- j. interfere with or disrupt the Service or servers or networks connected to the Service, or disobey any requirements, procedures, policies or regulations of networks connected to the Service;
- k. intentionally or unintentionally violate any applicable local, state, national or international law, including, but not limited to, regulations promulgated by the U.S. Securities and Exchange Commission, any rules of any national or other securities exchange, including, without limitation, the New York Stock Exchange, the American Stock Exchange or the NASDAQ, and any regulations having the force of law;
- l. provide material support or resources (or to conceal or disguise the nature, location, source, or ownership of material support or resources) to any organization(s) designated by the United States government as a foreign terrorist organization pursuant to section 219 of the Immigration and Nationality Act;
- m. "stalk" or otherwise harass another; and/or
- n. collect or store personal data about other users in connection with the prohibited conduct and activities set forth in paragraphs a through m above.

You acknowledge that Yahoo! may or may not pre-screen Content, but that Yahoo! and its designees shall have the right (but not the obligation) in their sole discretion to pre-screen, refuse, or remove any Content that is available via the Service. Without limiting the foregoing, Yahoo! and its designees shall have the right to remove any Content that violates the TOS or is otherwise objectionable. You agree that you must evaluate, and bear all risks associated with, the use of any Content, including any reliance on the accuracy, completeness, or usefulness of such Content. In this regard, you acknowledge that you may not rely on any Content created by Yahoo! or submitted to Yahoo!, including without limitation information in Yahoo! Message Boards and in all other parts of the Service.

You acknowledge, consent and agree that Yahoo! may access, preserve and disclose your account information and Content if required to do so by law or in a good faith belief that such access preservation or disclosure is reasonably necessary to: (a) comply with legal process; (b) enforce the TOS; (c) respond to claims that any Content violates the rights of third parties; (d) respond to your requests for customer service; or (e) protect the rights, property or personal safety of Yahoo!, its users and the public.

You understand that the technical processing and transmission of the Service, including your Content, may involve (a) transmissions over various networks; and (b) changes to conform and adapt to technical requirements of connecting networks or devices.

You understand that the Service and software embodied within the Service may include security components that permit digital materials to be protected, and that use of these materials is subject to usage rules set by Yahoo! and/or content providers who provide content to the Service. You may not attempt to override or circumvent any of the usage rules embedded into the Service. Any unauthorized reproduction, publication, further distribution or public exhibition of the materials provided on the Service, in whole or in part, is strictly prohibited.

#### 7. INTERSTATE NATURE OF COMMUNICATIONS ON YAHOO! NETWORK

When you register with Yahoo!, you acknowledge that in using Yahoo! services to send electronic communications (including but not limited to email, search queries, sending messages to Yahoo! Chat or Yahoo! Groups, uploading photos and files to Yahoo! Photos or Briefcase, and other Internet activities), you will be causing communications to be sent through Yahoo!'s computer networks, portions of which are located in California, Texas, Virginia, and other locations in the United States and portions of which are located abroad. As a result, and also as a result of Yahoo!'s network architecture and business practices and the nature of electronic communications, even communications that seem to be intrastate in nature can result in the transmission of interstate communications regardless of where you are physically located at the time of transmission. Accordingly, by agreeing to this Terms of Service, you acknowledge that use of the service results in interstate data transmissions.

Yahoo! Messenger, including any web-based versions, will allow you and the people with whom you communicate to save your conversations in your Yahoo! accounts located on Yahoo! servers. This means you can access and search your message history from any computer with access to the internet. Whether or not you use this feature, other users may choose to use it to save conversations with you in their account on Yahoo! too. Your agreement to this TOS constitutes your consent to allow Yahoo! to store these communications on its servers. From time to time Yahoo! will send you notices through the Yahoo! Messenger Service to let you know about important changes to the Yahoo! Messenger or related Services. Such messages may not be received if you violate this TOS by accessing the Service in an unauthorized manner. Your agreement to this TOS constitutes your agreement that you are deemed to have received any and all notices that would have been delivered had you accessed the Service in an authorized manner.

#### 8. SPECIAL ADMONITIONS FOR INTERNATIONAL USE

Recognizing the global nature of the Internet, you agree to comply with all local rules regarding online conduct and acceptable Content. Specifically, you agree to comply with all applicable laws regarding the transmission of technical data exported from the United States or the country in which you reside.

#### 9. CONTENT SUBMITTED OR MADE AVAILABLE FOR INCLUSION ON THE SERVICE

Yahoo! does not claim ownership of Content you submit or make available for inclusion on the Service. However, with respect to Content you submit or make available for inclusion on publicly accessible areas of the Service, you grant Yahoo! the following worldwide, royalty-free and non-exclusive license(s), as applicable:

- a. With respect to Content you submit or make available for inclusion on publicly accessible areas of Yahoo! Groups, the license to use, distribute, reproduce, modify, adapt, publicly perform and publicly display such Content on the Service solely for the purposes of providing and promoting the specific Yahoo! Group to which such Content was submitted or made available. This license exists only for as long as you elect to continue to include such Content on the Service and will terminate at the time you remove or Yahoo! removes such Content from the Service.
- b. With respect to photos, graphics, audio or video you submit or make available for inclusion on publicly accessible areas of the Service other than Yahoo! Groups, the license to use, distribute, reproduce, modify, adapt, publicly perform and publicly display such Content on the Service solely for the purpose for which such Content was submitted or made available. This license exists only for as long as you elect to continue to include such Content on the Service and will terminate at the time you remove or Yahoo! removes such

Content from the Service.

- c. With respect to Content other than photos, graphics, audio or video you submit or make available for inclusion on publicly accessible areas of the Service other than Yahoo! Groups, the perpetual, irrevocable and fully sublicensable license to use, distribute, reproduce, modify, adapt, publish, translate, publicly perform and publicly display such Content (in whole or in part) and to incorporate such Content into other works in any format or medium now known or later developed.

"Publicly accessible" areas of the Service are those areas of the Yahoo! network of properties that are intended by Yahoo! to be available to the general public. By way of example, publicly accessible areas of the Service would include Yahoo! Message Boards and portions of Yahoo! Groups, Photos and Briefcase that are open to both members and visitors. However, publicly accessible areas of the Service would not include portions of Yahoo! Groups that are limited to members, Yahoo! services intended for private communication such as Yahoo! Mail or Yahoo! Messenger, or areas off of the Yahoo! network of properties such as portions of World Wide Web sites that are accessible via hypertext or other links but are not hosted or served by Yahoo!.

#### 10. CONTRIBUTIONS TO YAHOO!

By submitting ideas, suggestions, documents, and/or proposals ("Contributions") to Yahoo! through its suggestion or feedback webpages, you acknowledge and agree that: (a) your Contributions do not contain confidential or proprietary information; (b) Yahoo! is not under any obligation of confidentiality, express or implied, with respect to the Contributions; (c) Yahoo! shall be entitled to use or disclose (or choose not to use or disclose) such Contributions for any purpose, in any way, in any media worldwide; (d) Yahoo! may have something similar to the Contributions already under consideration or in development; (e) your Contributions automatically become the property of Yahoo! without any obligation of Yahoo! to you; and (f) you are not entitled to any compensation or reimbursement of any kind from Yahoo! under any circumstances.

#### 11. INDEMNITY

You agree to indemnify and hold Yahoo! and its subsidiaries, affiliates, officers, agents, employees, partners and licensors harmless from any claim or demand, including reasonable attorneys' fees, made by any third party due to or arising out of Content you submit, post, transmit or otherwise make available through the Service, your use of the Service, your connection to the Service, your violation of the TOS, or your violation of any rights of another.

#### 12. NO RESALE OF SERVICE

You agree not to reproduce, duplicate, copy, sell, trade, resell or exploit for any commercial purposes, any portion of the Service (including your Yahoo! ID), use of the Service, or access to the Service.

#### 13. GENERAL PRACTICES REGARDING USE AND STORAGE

You acknowledge that Yahoo! may establish general practices and limits concerning use of the Service, including without limitation the maximum number of days that email messages, message board postings or other uploaded Content will be retained by the Service, the maximum number of email messages that may be sent from or received by an account on the Service, the maximum size of any email message that may be sent from or received by an account on the Service, the maximum disk space that will be allotted on Yahoo!'s servers on your behalf, and the maximum number of times (and the maximum duration for which) you may access the Service in a given period of time. You agree that Yahoo! has no responsibility or liability for the deletion or failure to store any messages and other communications or other Content maintained or transmitted by the Service. You acknowledge that Yahoo! reserves the right to log off accounts that are inactive for an extended period of time. You further acknowledge that Yahoo! reserves the right to modify these general practices and limits from time to time.

#### 14. MODIFICATIONS TO SERVICE

Yahoo! reserves the right at any time and from time to time to modify or discontinue, temporarily or permanently, the Service (or any part thereof) with or without notice. You agree that Yahoo! shall not be liable to you or to any third party for any modification, suspension or discontinuance of the Service.

#### 15. TERMINATION

You agree that Yahoo! may, *under certain circumstances and without prior notice*, immediately terminate your Yahoo! account, any associated email address, and access to the Service. Cause for such termination shall include, but not be limited to, (a) breaches or violations of the TOS or other incorporated agreements or guidelines, (b) requests by law enforcement or other government agencies, (c) a request by you (self-initiated account deletions), (d) discontinuance or material modification to the Service (or any part thereof), (e) unexpected technical or security issues or problems, (f) extended periods of inactivity, (g) engagement by you in fraudulent or illegal activities, and/or (h) nonpayment of any fees owed by you in connection with the Services. Termination of your Yahoo! account includes (a) removal of access to all offerings within the Service, including but not limited to Yahoo! Mail, Groups, Messenger, Chat, Domains, Personals, Auctions, Message Boards, Greetings, Alerts and Games, (b) deletion of your password and all related information, files and content associated with or inside your account (or any part thereof), and (c) barring of further use of the Service. Further, you agree that all terminations for cause shall be made in Yahoo!'s sole discretion and that Yahoo! shall not be liable to you or any third party for any termination of your account, any associated email address, or access to the Service.

#### 16. DEALINGS WITH ADVERTISERS

Your correspondence or business dealings with, or participation in promotions of, advertisers found on or through the Service, including payment and delivery of related goods or services, and any other terms, conditions, warranties or representations associated with such dealings, are solely between you and such advertiser. You agree that Yahoo! shall not be responsible or liable for any loss or damage of any sort incurred as the result of any such dealings or as the result of the presence of such advertisers on the Service.

#### 17. LINKS

The Service may provide, or third parties may provide, links to other World Wide Web sites or resources. Because Yahoo! has no control over such sites and resources, you acknowledge and agree that Yahoo! is not responsible for the availability of such external sites or resources, and does not endorse and is not responsible or liable for any Content, advertising, products or other materials on or available from such sites or resources. You further acknowledge and agree that Yahoo! shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with use of or reliance on any such Content, goods or services available on or through any such site or resource.

#### 18. YAHOO!'S PROPRIETARY RIGHTS

You acknowledge and agree that the Service and any necessary software used in connection with the Service ("Software") contain proprietary and confidential information that is protected by applicable intellectual property and other laws. You further acknowledge and agree that Content contained in sponsor advertisements or information presented to you through the Service or by advertisers is protected by copyrights, trademarks, service marks, patents or other proprietary rights and laws. Except as expressly permitted by applicable law or authorized by Yahoo! or advertisers, you agree not to modify, rent, lease, loan, sell, distribute or create derivative works based on the Service or the Software, in whole or in part.

Yahoo! grants you a personal, non-transferable and non-exclusive right and license to use the object code of its Software on a single computer; provided that you do not (and do not allow any third party to) copy, modify, create a derivative work from, reverse engineer, reverse assemble or otherwise attempt to discover any source code, sell, assign, sublicense, grant a security interest in or otherwise transfer any right in the Software. You agree not to modify the Software in any manner or form, nor to use modified versions of the Software, including (without limitation) for the purpose of obtaining unauthorized access to the Service. You agree not to access the Service by



any means other than through the interface that is provided by Yahoo! for use in accessing the Service.

#### 19. DISCLAIMER OF WARRANTIES

YOU EXPRESSLY UNDERSTAND AND AGREE THAT:

- a. YOUR USE OF THE SERVICE IS AT YOUR SOLE RISK. THE SERVICE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. YAHOO AND ITS SUBSIDIARIES, AFFILIATES, OFFICERS, EMPLOYEES, AGENTS, PARTNERS AND LICENSORS EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.
- b. YAHOO! AND ITS SUBSIDIARIES, AFFILIATES, OFFICERS, EMPLOYEES, AGENTS, PARTNERS AND LICENSORS MAKE NO WARRANTY THAT (i) THE SERVICE WILL MEET YOUR REQUIREMENTS; (ii) THE SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE OR ERROR-FREE; (iii) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICE WILL BE ACCURATE OR RELIABLE; (iv) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH THE SERVICE WILL MEET YOUR EXPECTATIONS; AND (v) ANY ERRORS IN THE SOFTWARE WILL BE CORRECTED.
- c. ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICE IS ACCESSED AT YOUR OWN DISCRETION AND RISK, AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH MATERIAL.
- d. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM YAHOO! OR THROUGH OR FROM THE SERVICE SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THE TOS.
- e. A SMALL PERCENTAGE OF USERS MAY EXPERIENCE EPILEPTIC SEIZURES WHEN EXPOSED TO CERTAIN LIGHT PATTERNS OR BACKGROUNDS ON A COMPUTER SCREEN OR WHILE USING THE SERVICE. CERTAIN CONDITIONS MAY INDUCE PREVIOUSLY UNDETECTED EPILEPTIC SYMPTOMS EVEN IN USERS WHO HAVE NO HISTORY OF PRIOR SEIZURES OR EPILEPSY. IF YOU, OR ANYONE IN YOUR FAMILY, HAVE AN EPILEPTIC CONDITION, CONSULT YOUR PHYSICIAN PRIOR TO USING THE SERVICE. IMMEDIATELY DISCONTINUE USE OF THE SERVICE AND CONSULT YOUR PHYSICIAN IF YOU EXPERIENCE ANY OF THE FOLLOWING SYMPTOMS WHILE USING THE SERVICE: DIZZINESS, ALTERED VISION, EYE OR MUSCLE TWITCHES, LOSS OF AWARENESS, DISORIENTATION, ANY INVOLUNTARY MOVEMENT, OR CONVULSIONS.

#### 20. LIMITATION OF LIABILITY

YOU EXPRESSLY UNDERSTAND AND AGREE THAT YAHOO! AND ITS SUBSIDIARIES, AFFILIATES, OFFICERS, EMPLOYEES, AGENTS, PARTNERS AND LICENSORS SHALL NOT BE LIABLE TO YOU FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES (EVEN IF YAHOO! HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), RESULTING FROM: (i) THE USE OR THE INABILITY TO USE THE SERVICE; (ii) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES RESULTING FROM ANY GOODS, DATA, INFORMATION OR SERVICES PURCHASED OR OBTAINED OR MESSAGES RECEIVED OR TRANSACTIONS ENTERED INTO THROUGH OR FROM THE SERVICE; (iii) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR DATA; (iv) STATEMENTS OR CONDUCT OF ANY THIRD PARTY ON THE SERVICE; OR (v) ANY OTHER MATTER RELATING TO THE SERVICE.

21. EXCLUSIONS AND LIMITATIONS

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES. ACCORDINGLY, SOME OF THE ABOVE LIMITATIONS OF SECTIONS 19 AND 20 MAY NOT APPLY TO YOU.

22. SPECIAL ADMONITION FOR SERVICES RELATING TO FINANCIAL MATTERS

If you intend to create or join any service, receive or request any news, messages, alerts or other information from the Service concerning companies, stock quotes, investments or securities, please read the above Sections 19 and 20 again. They go doubly for you. In addition, for this type of information particularly, the phrase "Let the investor beware" is apt. The Service is provided for informational purposes only, and no Content included in the Service is intended for trading or investing purposes. Yahoo! and its licensors shall not be responsible or liable for the accuracy, usefulness or availability of any information transmitted or made available via the Service, and shall not be responsible or liable for any trading or investment decisions based on such information.

23. NO THIRD-PARTY BENEFICIARIES

You agree that, except as otherwise expressly provided in this TOS, there shall be no third-party beneficiaries to this agreement.

24. NOTICE

Yahoo! may provide you with notices, including those regarding changes to the TOS, including by but not limited to email, regular mail, SMS, MMS, text message, postings on the Service, or other reasonable means now known or hereinafter developed.

25. TRADEMARK INFORMATION

The YAHOO!, Yahoo! logo, YAHOO! (in Chinese characters), YAHOO!IGANS!, Yahoo!igans! logo, YAHOO! KIDS, Yahoo! Kids logo, Jumpin' Y Guy logo, DO YOU YAHOO!?, Y!, Y! logo, MY YAHOO!, Y! and Star logo, YAHOO! YODEL, YAHOO! EVERYWHERE, YAHOO! GROUPS, YAHOO! MAIL OUTPOST, YAHOO! VISION, Eyeballs logo, 12 DAYS OF GIVING, 1800MYAHOO, ACCENTRIC, BETTER JOBS FOR A BETTER LIFE, BINGO, BROADCAST.COM, CAMP YAHOO!, CORPORATE YAHOO!, CYBERSET, EGROUPE, FANTASY CAREERS, FOR ALL THAT SURFING YOU NEED THE RIGHT BOARD, FORTIFIED WITH YAHOO!, FUTUREBUILDER, GAMEPROWLER, GameProwler logo, GEOCITIES, GeoCities logo, GEOCITIES (in Chinese characters), GET LOCAL, Hexagon Design, HOPE FOR THE HOLIDAYS, HOTJOBS, HOW DO YOU MOVE YOUR MONEY?, HUMAN COUPON, IMVIRONMENTS, INKTOMI, INTERNET AT THE SPEED OF YOU, INVOLVEMENT BRANDING, IPO ROW, JT'S BLOCKS, LIVING ROOM ACTIVE, MATCHCAST, NAVAL COMMAND, PERMISSION MARKETING, PERSONAL EDGE, PERSONAL NOTES HOSTED BY DAVE KOZ, RESLEX, RESUMIX, ROCKETMAIL, SAFETY SHIELD, SCALING THE INTERNET, SHOPFIND, SOFTSHOE, SPORTSTREAM and Design, Star Design, STATTRACKER, THE BIG PICTURE, THE EXPERIENCED PROFESSIONAL'S JOB BOARD, THE ORIGINAL TEXAS YA-HOO CAKE CO. and Design, THE WEB'S HOTTEST JOBS, TOKI TOKI BOOM, TRAFFIC CONTROLLER, TRAFFIC SERVER, TURN IT ON, VALUELAB, VIVASmart, WEB CORPS, Web Corps logo, WORD RACER, WORDAHOLIC, WORKWORLD, WWW.HOTJOBS.COM, YEF, and YOUR HOME ON THE WEB trademarks and service marks and other Yahoo! logos and product and service names are trademarks of Yahoo! Inc. (the "Yahoo! Marks"). Without Yahoo!'s prior permission, you agree not to display or use in any manner the Yahoo! Marks.

26. NOTICE AND PROCEDURE FOR MAKING CLAIMS OF COPYRIGHT OR INTELLECTUAL PROPERTY INFRINGEMENT

Yahoo! respects the intellectual property of others, and we ask our users to do the same. Yahoo! may, in appropriate circumstances and at its discretion, disable and/or terminate the accounts of



users who may be repeat infringers. If you believe that your work has been copied in a way that constitutes copyright infringement, or your intellectual property rights have been otherwise violated, please provide Yahoo!'s Copyright Agent the following information:

- a. an electronic or physical signature of the person authorized to act on behalf of the owner of the copyright or other intellectual property interest;
- b. a description of the copyrighted work or other intellectual property that you claim has been infringed;
- c. a description of where the material that you claim is infringing is located on the site;
- d. your address, telephone number, and email address;
- e. a statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law;
- f. a statement by you, made under penalty of perjury, that the above information in your Notice is accurate and that you are the copyright or intellectual property owner or authorized to act on the copyright or intellectual property owner's behalf.

Yahoo!'s Agent for Notice of claims of copyright or other intellectual property infringement can be reached as follows:

By mail:  
 Copyright Agent  
 c/o Yahoo! Inc.  
 701 First Avenue  
 Sunnyvale, CA 94089  
 By phone: (408) 349-5080  
 By fax: (408) 349-7821  
 By email: [copyright@yahoo-inc.com](mailto:copyright@yahoo-inc.com)

## 27. GENERAL INFORMATION

*Entire Agreement.* The TOS constitutes the entire agreement between you and Yahoo! and governs your use of the Service, superseding any prior agreements between you and Yahoo! with respect to the Service. You also may be subject to additional terms and conditions that may apply when you use or purchase certain other Yahoo! services, affiliate services, third-party content or third-party software.

*Choice of Law and Forum.* The TOS and the relationship between you and Yahoo! shall be governed by the laws of the State of California without regard to its conflict of law provisions. You and Yahoo! agree to submit to the personal and exclusive jurisdiction of the courts located within the county of Santa Clara, California.

*Waiver and Severability of Terms.* The failure of Yahoo! to exercise or enforce any right or provision of the TOS shall not constitute a waiver of such right or provision. If any provision of the TOS is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of the TOS remain in full force and effect.

*No Right of Survivorship and Non-Transferability.* You agree that your Yahoo! account is non-transferable and any rights to your Yahoo! ID or contents within your account terminate upon your death. Upon receipt of a copy of a death certificate, your account may be terminated and all contents therein permanently deleted.

*Statute of Limitations.* You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the Service or the TOS must be filed within one (1) year after such claim or cause of action arose or be forever barred.

The section titles in the TOS are for convenience only and have no legal or contractual effect.

28. VIOLATIONS

Please report any violations of the TOS to our [Customer Care](#) group.

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6 Attorneys for Plaintiff  
7 Symantec Corporation

8  
9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA (SAN JOSE DIVISION)

11 Symantec Corporation,	)	Case No. C08-2431 JW
	)	
12 Plaintiff,	)	[PROPOSED] ORDER GRANTING
	)	PLAINTIFFS' APPLICATION FOR
13 v.	)	LEAVE TO TAKE IMMEDIATE
	)	DISCOVERY PRIOR TO RULE 26(F)
14 Luis Chang, and Does 1 – 10, inclusive,	)	CONFERENCE AND REQUEST FOR
	)	ENLARGEMENT OF TIME WITHIN
15 Defendants.	)	WHICH TO EFFECT SERVICE OF
	)	PROCESS

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17 The Court has read and considered all papers filed in connection with Plaintiff's *Ex Parte*  
18 Application for Leave to Take Immediate Discovery Prior to Rule 26(f) Conference and Request  
19 for Enlargement of Time Within Which to Effect Service of Process ("the Application").

20 IT IS HEREBY ORDERED that the Application is granted.

21 IT IS FURTHER ORDERED that Plaintiff may serve immediate discovery on PayPal, Inc.  
22 ("PayPal"), eBay, Inc. ("eBay"), and Yahoo! Inc. ("Yahoo") by serving Fed. R. Civ. P. 45  
23 subpoenas, which seek information sufficient to conclusively identify and locate Luis Chang  
24 ("Defendant") doing business as "expdepot" and "shopsmartwithbetterchoice," whose email  
25 address is chang\_luis@yahoo.com, including names, addresses, telephone numbers, identity of the  
26 Defendant's financial institution(s), and other email address(es) for the Defendant.

1 If PayPal, eBay, or Yahoo wish to file a motion to quash the subpoenas or to serve  
2 objections, they must do so before the return date of the subpoenas, which shall be no less than  
3 twenty-one (21) days from the date of service of the subpoenas. Among other things, PayPal, eBay  
4 or Yahoo may use this time to notify the subscribers in question.  
5

6 PayPal, eBay, and Yahoo shall preserve any subpoenaed information or materials pending  
7 compliance with the subpoenas or resolution of any timely objection or motion to quash.

8 IT IS FURTHER ORDERED that Plaintiff must serve a copy of this order on PayPal, eBay,  
9 and Yahoo when it serves the subpoenas.

10 IT IS FURTHER ORDERED that any information disclosed to Plaintiff in response to the  
11 Fed. R. Civ. P. 45 subpoenas may be used by Plaintiff solely for the purpose of protecting  
12 Plaintiff's rights under the Copyright Act.

13 IT IS FURTHER ORDERED THAT Plaintiff shall have a sixty (60) day enlargement of  
14 time within which to serve Defendant with Summons and Complaint, and in no event later than  
15 November 8, 2008.

16 Dated:

17 Magistrate Judge, United States District Court for the  
18 Northern District of California

19 Presented By:

20 J. Andrew Coombs,  
21 A Professional Corporation

22 By: Nicole L. Drey

23 J. Andrew Coombs

24 Nicole L. Drey

25 Attorneys for Plaintiff  
26 Symantec Corporation  
27  
28